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In the Supreme Court of the United States

OCTOBER TERM, 1980

GEORGE A. RALSTON, WARDEN, PETITIONER

v.

JOHN CARROLL ROBINSON

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTION PRESENTED

Whether an offender convicted of a crime while serving a sentence under the Youth Corrections Act, 18 U.S.C. 5005 *et seq.*, and sentenced to a consecutive term of imprisonment as an adult, must be treated as a YCA offender for the remainder of his YCA sentence.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The Solicitor General hereby petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

OPINION BELOW

The opinion of the court of appeals (App. A, *infra*, 1a-15a) is not yet reported. The order of the district court (App. C, *infra*, 18a-20a) and the magistrate's report and recommendation (App. D, *infra*, 21a-29a) are not reported.

JURISDICTION

The judgment of the court of appeals (App. B, *infra*, 16a-17a) was entered on March 5, 1981. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTES INVOLVED

18 U.S.C. 5010(c) and (d) provide:

> (c) If the court shall find that the youth offender may not be able to derive maximum benefit from treatment by the Commission prior to the expiration of six years from the date of conviction it may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youth offender to the custody of the Attorney General for treatment and supervision pursuant to this chapter for any further period that may be authorized by law for the offense or offenses of which he stands convicted or until discharged by the Commission as provided in section 5017(d) of this chapter.
>
> (d) If the court shall find that the youth offender will not derive benefit from treatment under subsection (b) or (c), then the court may sentence the youth offender under any other applicable penalty provision.

18 U.S.C. 5011 provides:

> Committed youth offenders not conditionally released shall undergo treatment in institutions of maximum security, medium security, or minimum security types, including training schools, hospitals, farms, forestry and other camps, and other agencies that will provide the essential varieties of treatment. The Director shall from time to time designate, set aside, and adapt institutions and agencies under the control of the Department of Justice for treatment. Insofar as practical, such institutions and agencies shall be used only for treatment of committed youth offenders, and such youth offenders shall be segregated from other offenders, and classes of committed youth offenders shall be segregated according to their needs for treatment.

18 U.S.C. 5015 provides:

> (a) On receipt of the report and recommendations from the classification agency the Director may—
>
> (1) recommend to the Commission that the committed youth offender be released conditionally under supervision; or
>
> (2) allocate and direct the transfer of the committed youth offender to an agency or institution for treatment; or
>
> (3) order the committed youth offender confined and afforded treatment under such conditions as he believes best designed for the protection of the public.
>
> (b) The Director may transfer at any time a committed youth offender from one agency or institution to any other agency or institution.

STATEMENT

In 1974, a jury of the Superior Court of the District of Columbia convicted respondent, then 17 years old, of second degree murder, in violation of D.C. Code Ann. § 22-2403 (1973 & Supp. I 1974). Respondent was sentenced to ten years' imprisonment under the Youth Corrections Act (YCA), 18 U.S.C. 5010(c) (App. A, *infra*, 2a). The YCA provides a "program of treatment" of which "[a]n integral part" is "the segregation of the committed persons, insofar as practicable, so as * * * to avoid the influence of association with the more hardened inmates serving traditional criminal sentences." *Dorszynski* v. *United States*, 418 U.S. 424, 434 (1974).

While respondent was serving the YCA term, he was convicted of assaulting a federal correctional

officer, in violation of 18 U.S.C. 111. The district court explicitly rejected sentencing under the YCA, finding that respondent would not benefit from YCA treatment. The court instead sentenced respondent to an adult term of five and one-half years' imprisonment, to run consecutively to the YCA sentence (App. A, *infra*, 2a-3a). After a series of disciplinary reports,[1] respondent was placed in the Federal Correctional Institution at Lompoc, California, where he again attacked a correctional officer. He pleaded guilty to assault on a federal officer and was sentenced to an adult term of one year and one day, to run consecutively to his other sentences (*id.* at 3a).[2]

After respondent received these adult sentences, the Bureau of Prisons, following an explicit policy,[3] treated respondent as an adult offender. In 1978, respondent petitioned for a writ of habeas corpus. A United States Magistrate in the Southern District of Illinois[4] recommended that relief be granted and

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[1] We have been advised by the Bureau of Prisons that from the time of his incarceration in July 1974 through July 1980, respondent had been cited in 36 incident reports. Many of his citations are for violent conduct.

[2] At this time, Robinson was still eligible for sentencing under the YCA. The district court that imposed this sentence made no explicit finding that Robinson would not benefit from a YCA sentence (App. A, *infra*, 3a).

[3] Bureau of Prisons Policy Statement No. 5215.2 (Dec. 12, 1978), which deals with the custody of offenders sentenced under the YCA, excludes from its scope "any inmate * * * who is * * * also sentenced to a concurrent or consecutive adult term, whether state or federal."

[4] Respondent filed his petition in the Southern District of Indiana. It was transferred to the Southern District of Illinois when respondent was moved to the United States Penitentiary at Marion, Illinois.

that respondent be "transfer[red] * * * to an institution at which he will be segregated from adult offenders and will receive treatment as prescribed by 18 U.S.C. § 5011" (App. D, *infra*, 29a). The district court said that it was "hesitan[t]" to order respondent treated as a YCA offender (App. C, *infra*, 20a) but that "Congress has mandated the result which the Magistrate has arrived at" (*id.* at 19a). It therefore adopted the magistrate's report and recommendation (*id.* at 20a).

The court of appeals affirmed (App. A, *infra*, 1a-15a). It held that respondent must be treated as a YCA offender until his original YCA sentence is completed, even though he was sentenced to two consecutive adults terms. It assumed *arguendo* that the subsequent adult sentences constituted findings that respondent would no longer benefit from his YCA sentence, but it said that allowing respondent's initial YCA sentence to be affected by a subsequent adult sentence "would necessarily deprive the judge who imposed the [YCA] sentence * * * of his traditional and exclusive sentencing function" (*id.* at 8a). In reaching this conclusion the court explicitly disagreed with *Thompson* v. *Carlson*, 624 F.2d 415 (3d Cir. 1980). Quoting from the dissent in *Thompson*, the court said that neither the YCA nor its legislative history suggested that a YCA sentence, once imposed, could be changed by a judge imposing a subsequent sentence on the same offender. The court rejected the government's argument that it would be pointless to provide YCA treatment to an offender who will soon be incarcerated as an adult. The court also ruled that the YCA did not confer on the Bureau of Prisons discretion to decide whether a YCA inmate sentenced to a consecutive adult term should

be confined as an adult offender (App. A, *infra*, 11a-14a).

Judge Pell concurred in the opinion because he believed that the Act required continued YCA treatment for respondent. But he added (App. A, *infra*, 14a-15a):

> The record in this case scarcely indicates that [respondent] was benefitting from YCA treatment. Two federal district judges determined, one explicitly and the other in effect, that [respondent] would receive no benefit from YCA treatment. These determinations would be effective in any event, whenever and however, the YCA period of the sentence was completed. * * * I see, on this record, no indication to think that either [respondent] or society will benefit by continuing the YCA treatment * * *.

REASONS FOR GRANTING THE PETITION

The issue presented by this case is of substantial importance both to the administration of the federal prison system and to the policies underlying the Youth Corrections Act. The decision of the court of appeals conflicts with the positions taken by two other circuits, positions which are to some extent divergent from one another. This conflict threatens to interfere with the efficient operation of the prison system. Moreover, the court of appeals' decision produces an irrational result that could not have been intended by Congress. Specifically, the decision is inconsistent with two of the basic principles of the Youth Corrections Act—that YCA offenders are to be kept free of the influence of hardened adult prisoners, and that the objective of the Act is to provide rehabilitative treatment for

young offenders so that they may be released into society as productive citizens. By effectively requiring recidivists under adult sentences to be mingled with YCA offenders, the decision of the court below will affect not only those YCA offenders who are under consecutive adult sentences [5] but potentially all YCA offenders.

1. In *Thompson* v. *Carlson*, 624 F.2d 415 (3d Cir. 1980), a youth offender was convicted of murder while serving his YCA sentence. The district court in which he was so convicted found that he would not benefit from YCA treatment and sentenced him to a consecutive adult sentence of life imprisonment. On these facts, which parallel those of the present case, the Third Circuit held that the offender "can be returned to an adult prisoner population for the remainder of the YCA sentence" (*id.* at 422). The Third Circuit reasoned that "the concern of the statute is toward those prisoners who will be released following the YCA sentence. Therefore, the purpose of the YCA treatment under segregation is inapplicable to * * *" offenders who have been sentenced to consecutive adult terms (*ibid.*).

Outing v. *Bell*, 632 F.2d 1144 (4th Cir. 1980), cert. denied, No. 80-6005 (Mar. 23, 1981), also involved a youth offender who committed a crime while serving his YCA sentence and received a consecutive adult sentence. The Fourth Circuit, not relying on the second sentencing judge's finding that the of-

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[5] We have been advised by the Bureau of Prisons that, as of December 31, 1980, there were 1,375 inmates serving YCA sentences. Of these, 175, or 12.7%, were also under concurrent or consecutive adult sentences.

fender would not benefit from YCA treatment,[6] specifically upheld the Bureau of Prisons policy of treating such offenders as adults. It said that this policy conformed to the Act and promoted its objectives (632 F.2d at 1146) and that allowing the offender to retain his YCA status would be "contrary to the purposes of the Act" (*ibid.*). Thus in the Third and Fourth Circuits the Bureau would be free to treat an offender situated similarly to respondent as an adult; in the Fourth Circuit, at least, it might be free to do so even if there were no explicit finding by the second sentencing judge that the offender would not benefit from YCA treatment. Indeed, some of the language in *Outing* might be read to suggest that the Bureau *must* treat an offender like respondent as an adult.

The Bureau of Prisons administers an integrated nationwide correctional system, in which certain facilities are specialized to provide specific forms of treatment, training, or security. The decision of the court below and the resulting conflict among circuits threaten to distort the Bureau's administration of this system and to interfere with the Bureau's ability to use the system in the most efficient fashion. Geographical factors that should be irrelevant will enter into decisions properly based on the inmate's needs and characteristics and the system's capacities. For example, the federal facility at Marion, Illinois, has the highest maximum security classification of any federal institution (see App. D, *infra*, 22a). But because it is located in the Seventh Circuit, it cannot be used to house inmates serving YCA terms

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[6] Such a finding was made (see Memorandum for the United States in Opposition, *Outing* v. *Smith*, No. 80-6005, at 2), but the Fourth Circuit nowhere refers to it.

who are subject to consecutive adult terms of imprisonment, even if those inmates have committed several violent crimes and have a history of violence, and even if the Bureau believes that the optimal use of the system's resources would be to confine a particular inmate of this sort at Marion. Such an inmate could be kept in an institution in the Fourth Circuit, and in most cases in the Third Circuit, but in neither of those circuits is there a facility comparable to Marion. Those inmates who should be at Marion will, in turn, occupy places in other institutions that could be more profitably used by different inmates.

2. When Congress enacted the YCA, it did not explicitly deal with the proper treatment of inmates who receive consecutive adult sentences while serving YCA sentences; in fact, it seems clear that Congress gave no attention to this situation. But Congress did make clear the central purposes of the YCA, and the decision of the court below is inconsistent with those purposes. As this Court has said, "[a]n integral part of the treatment program" prescribed by the Act is "the segregation of" offenders committed under the Act, "insofar as practicable, so as * * * to avoid the influence of association with the more hardened inmates serving traditional criminal sentences." *Dorszynski* v. *United States*, *supra*, 418 U.S. at 434. The decision of the court below prohibits the Bureau from confining respondent with the general adult population. Since it will seldom be practical to segregate offenders like respondent from all others, the result of the court of appeals' decision —and the one undoubtedly contemplated by the court—is to require offenders like respondent to be mingled with youthful offenders serving only a YCA sentence.

Respondent, who is now 24 years old, has received adult sentences for two violent crimes. In one instance the sentencing judge expressly determined that respondent would not benefit from a YCA sentence. He has an extensive disciplinary record of violent incidents. It is difficult to believe that when Congress enacted the YCA—which it intended to preclude "herding youth with maturity, the novice with the sophisticate, the impressionable with the hardened, and * * * subjecting youth offenders to the evil influences of older criminals" (H.R. Rep. No. 2979, 81st Cong., 2d Sess. 2-3 (1950))—it also intended young offenders to be confined with inmates like respondent. As the Fourth Circuit has said, "[j]ust because [an offender with a consecutive adult sentence] had a previous YCA sentence does not make him any the less an adult offender" (*Outing* v. *Bell*, *supra*, 632 F.2d at 1146).

Moreover, the treatment program designed by Congress in the YCA is plainly not intended for an offender who has received a consecutive adult sentence. Congress believed that certain youth offenders could be rehabilitated, and it believed that traditional adult prisoners hardened and corrupted those offenders. See, *e.g.*, H.R. Rep. No. 2979, *supra*, at 2-3; *Dorszynski* v. *United States*, *supra*, 418 U.S. at 432-434. Thus the purpose of YCA treatment was to "correct[]" the offender's "antisocial tendencies" (18 U.S.C. 5006(f)) so that the offender could be "return[ed] * * * to society as [a] social and rehabilitated citizen[]" (H.R. Rep. No. 2979, *supra*, at 5). Respondent, however, will not be returned to society at the end of his YCA sentence; he will immediately begin two adult terms totaling over six years. Nothing in the Act or its legislative history suggests that Congress would have seen any purpose in attempting

to correct an offender's antisocial tendencies and to "rehabilitate [the offender] and restore normal behavior patterns" (*Dorszynski* v. *United States*, *supra*, 418 U.S. at 433) only to release the offender to precisely the adult imprisonment that it believed was incompatible with the rehabilitation of YCA offenders.

Even apart from the futility of providing YCA treatment to an offender who is about to begin an extended adult prison term, respondent has demonstrated, to the satisfaction of two sentencing judges, that he is not the kind of offender who will profit from YCA treatment. Congress intended such treatment for young offenders who "show promise of becoming useful citizens" (H.R. Rep. No. 2979, *supra*, at 1) and who "hold out" a "prospect * * * for success through correctional treatment" (*id.* at 5). The YCA was intended to prevent recidivism, where possible; respondent, and other YCA offenders who have subsequently received adult sentences, have proven themselves to be adult recidivists.

The court of appeals' holding (App. A, *infra*, 6a-11a) that the YCA does not permit the determinations of subsequent sentencing judges to affect respondent's initial YCA sentence is incorrect. Congress made it clear that punishment and treatment under the Act were to be tailored to the characteristics of the particular offender (see H.R. Rep. No. 2979, *supra*, at 5; *Dorszynski* v. *United States*, *supra*, 418 U.S. at 434) and that decisions about sentencing and conditions of confinement under the Act are to be made in light of all available information about the offender (see S. Rep. No. 1180, 81st Cong., 1st Sess. 5 (1949)). The Act itself reflects this approach (see, *e.g.*, 18 U.S.C. 5010(e), 5014, 5016). These principles are incon-

sistent with the court of appeals' view that a YCA sentence is an inflexible prescription that must be followed regardless of subsequent developments and subsequent determinations by sentencing courts.[7]

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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JUNE 1981

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[7] The court of appeals also gave insufficient weight to the decision of the Bureau of Prisons to follow its policy and treat respondent as an adult offender. The court of appeals correctly noted that the sentencing judge alone decides whether a defendant will be sentenced as an adult or as a YCA offender (App. A, *infra*, 13a-14a). The issue here, however, concerns the treatment prescribed by the Act for an offender who is confined pursuant to both a YCA and an adult sentence—a matter never specifically considered by Congress. The Bureau of Prisons has the principal responsibility for translating YCA sentences into specific institutional arrangements (see 18 U.S.C. 5011, 5013-5015); here, the Bureau decided that respondent, and other offenders like him, are properly treated as adults. Moreover, the YCA should be interpreted in light of the realities of prison administration, and the Bureau is expert in that area.

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Nos. 80-1323 and 80-1142

JOHN CARROLL ROBINSON, PETITIONER-APPELLEE, CROSS-APPELLANT

v.

GEORGE A. RALSTON, Warden, RESPONDENT-APPELLANT, CROSS-APPELLEE

Appeals from the United States District Court for the Southern District of Illinois

No. CV 78-2347—James L. Foreman, *Judge*

ARGUED NOVEMBER 6, 1980—DECIDED MARCH 5, 1981

Before SWYGERT, *Circuit Judge*, WISDOM, *Senior Circuit Judge*,* and PELL, *Circuit Judge*.

SWYGERT, *Circuit Judge*. The issue in this appeal is whether a youth offender serving a sentence imposed under the Federal Youth Corrections Act (YCA), 18 U.S.C. § 5005 *et seq.*, must be treated ac-

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* The Honorable John M. Wisdom, United States Senior Circuit Judge for the Fifth Circuit, sitting by designation.

cording to the terms of the YCA after he has received two subsequent adult sentences to run consecutive to his YCA sentence. We hold that under the provisions of the YCA, petitioner-appellee must be treated pursuant to YCA until the termination of his YCA-imposed sentence despite his subsequent sentencing as an adult. Accordingly, we affirm.

I

Petitioner-appellee John Carroll Robinson was seventeen years old when in 1974 he was sentenced to a ten-year term for second degree murder under the provisions of the Federal Youth Corrections Act (YCA), 18 U.S.C. § 5010(c).[1] The trial judge recommended that "his release be dependent upon the attainment of at least an eighth grade level of education and the successful completion of a trade of his own choosing." In addition, the judge recommended participation "in intensive, individual therapy on a weekly basis. . . ."

During his incarceration at the Federal Correctional Institution in Ashland, Kentucky, Robinson was found guilty of assaulting a federal officer. The

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[1] Under the provisions of the YCA, a judge who sentences an offender who is under the age of twenty-two when convicted may (a) place the offender on probation; (b) commit him to the custody of the Attorney General for treatment for a maximum period of four years, with an additional period of probation; (c) make a similar commitment for a period not to exceed the maximum adult sentence for the crime; or (d) sentence the youth offender as an adult. 18 U.S.C. § 5010; *Dorszynski* v. *United States*, 418 U.S. 424, 433-434 (1974). A judge sentencing a youth offender must determine whether the offender will benefit from treatment under the YCA as a condition precedent to sentencing him as an adult. *Dorszynski*, 418 U.S. at 444.

second trial judge decided that Robinson would not benefit from treatment under the YCA and imposed an additional ten-year adult sentence, pursuant to 18 U.S.C. § 4208(b). After receiving a report and recommendation from the Bureau of Prisons, the judge reduced the second ten-year sentence to sixty-six months, to run consecutive to the previously-imposed YCA sentence.

After several subsequent transfers, Robinson was placed in the Federal Correctional Institution in Lompoc, California where he pled guilty to assaulting another federal officer. For that offense, he was given a regular adult sentence of one year and one day to run consecutive to his YCA and other adult sentences. The third trial judge did not make an explicit finding that Robinson would receive no benefit from a YCA sentence, although it is not disputed that Robinson was still eligible for sentencing under the YCA.

After the imposition of his second adult sentence, Robinson was placed in the United States Penitentiary at Terre Haute, Indiana, where he was treated as a regular adult offender. He was not segregated from non-YCA adult offenders nor was he provided the treatment mandated by section 5011 of the Youth Corrections Act, 18 U.S.C. § 5011.[2] It is not disputed

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[2] According to 18 U.S.C. § 5011:

> Committed youth offenders not conditionally released shall undergo treatment in institutions of maximum security, medium security, or minimum security types, including training schools, hospitals, farms, forestry and other camps, and other agencies that will provide the essential varieties of treatment. The Director [of the Bureau of Prisons] shall from time to time designate, set aside, and adapt institutions and agencies under the

that Robinson was at that time serving his initial YCA sentence. After exhausting his administrative remedies, Robinson filed a petition for a writ of habeas corpus on May 25, 1978 in the United States District Court for the Southern District of Indiana. The case was subsequently transferred to the Southern District of Illinois because in September 1978 Robinson was moved to the United States Penitentiary at Marion, Illinois. Robinson was still serving his YCA sentence when he was incarcerated with adult prisoners in the control unit at Marion. The basis of the habeas petition was that Robinson was serving a YCA sentence and was therefore entitled to be segregated from adult offenders pursuant to 18 U.S.C. § 5011.

On the recommendation of the United States Magistrate that Robinson be transferred to an institution in which he would be segregated from adult offenders and receive the treatment contemplated by the YCA, Judge Foreman granted Robinson a writ of habeas corpus, concluding "after a thorough researching of the applicable statute and case law, . . . that Congress mandated the result which the Magistrate has arrived at." On January 7, 1980 the district court ordered the Government to transfer Robinson from Marion to an institution where he would be segregated from other adult offenders and would receive the prescribed treatment. On January 16, 1980, the Government filed a motion to stay the order pending appeal. That motion was granted.

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control of the Department of Justice for treatment. Insofar as practical, such institutions and agencies shall be used only for treatment of committed youth offenders, and such youth offenders shall be segregated from other offenders, and classes of committed youth offenders shall be segregated according to their needs for treatment.

The Government appealed from the district court's January 7 order granting the writ of habeas corpus, and Robinson appealed the January 22 stay of that order. The appeals were consolidated.

On June 17, 1980, Robinson was again transferred, this time from Marion to the Federal Correctional Institution at Memphis, Tennessee. The institution at Memphis does have a YCA unit, but Robinson was housed with the general adult prison population and did not receive YCA-mandated treatment.[3]

II

The respondent Warden contends that the district court erred in holding that the YCA requires that petitioner be treated according to the provisions of the YCA after he has received two subsequent adult sentences to run consecutive to his YCA sentence. Petitioner argues that the decision reached by the district court is mandated both by the YCA and the United States Constitution.[4]

The issue before us has never been decided by this court. The Third Circuit, however, faced with a similar fact pattern, concluded that a second judge's determination that an offender would not derive benefit from a YCA sentence and must therefore serve the second sentence as an adult prisoner was also a finding that "*continued* service of the original sentence under YCA conditions is no longer beneficial." *Thompson* v. *Carlson*, 624 F.2d 415, 422 (3d Cir. 1980) (emphasis in original). On the basis that

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[3] At oral argument, counsel for petitioner stated that Robinson has since been transferred to a hospital in Butner, North Carolina, for psychiatric evaluation.

[4] We need not decide the constitutional issues raised, because we hold that the statute mandates the result we reach.

there was a "judicial reevaluation [of the original YCA sentence] in light of currently available information," the court held that the offender could be treated as an adult for the duration of his YCA sentence. *Id.* Because we conclude that the YCA mandates that the petitioner be treated as a YCA prisoner so long as he is serving his YCA sentence, we respectfully disagree with the decision of the Third Circuit.[5]

At the outset we note that in both our case and in *Thompson*, the judge imposing the consecutive adult sentence made no actual reevaluation of the YCA sentence then being served. Rather the Warden here argues and the court in *Thompson* concluded that the subsequent judge's determination that the sentence he imposed should be served as an adult was an implicit finding that the offender would not continue to benefit from YCA treatment for the duration of his YCA sentence. We find no evidence in the record from which to conclude that the subsequent judges did in fact reevaluate the original YCA sentence; however, we do not rest our holding on that factual determination. We conclude that the YCA does not permit such a reevaluation, even if it were explicitly made.

The parties agree that the YCA contains no provision authorizing a YCA sentence to be reevaluated by another judge. Nonetheless, the Warden urges, quoting from the Third Circuit's decision in *Thompson*, that we "fill in the interstices of the statute" by allowing a second judge who sentences the offender

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[5] This opinion has been circulated among all judges of this court in regular active service. No judge favored a rehearing en banc on the question of our declining to follow *Thompson* v. *Carlson*.

as an adult also to reevaluate the YCA sentence. 624 F.2d at 419. Based on our analysis of the statutory language, the legislative history, and the Supreme Court's decision in *Dorszynski* v. *United States*, 418 U.S. 424 (1974), we reject the Warden's suggested interpretation.

Petitioner was initially sentenced under the YCA, the purpose of which was "to provide a better method of treating young offenders convicted in federal courts in that vulnerable age bracket, to rehabilitate them and restore normal behavior patterns." *Dorszynski* v. *United States*, 418 U.S. 424, 433 (1974). According to the terms of the statute, regardless of whether he is housed in an institution of maximum, medium or minimum security, a committed youth offender must be segregated from adult prisoners. 18 U.S.C. § 5011; *United States ex rel. Dancy* v. *Arnold*, 572 F.2d 107 (3d Cir. 1978).[6] In addition, a committed youth offender must be sentenced to an institution or agency "that will provide the essential varieties of treatment" and be "segregated according to [his need] for treatment." 18 U.S.C. § 5011. As the Third Circuit stated in *Micklus* v. *Carlson*, 632 F.2d 227, 237 (3d Cir. 1980) (emphasis in original): "The major thrust of Section 5011 is its requirement of both *segregation* and *treatment* for committed youth offenders." In *Micklus*, the court held that the rights to segregation and treatment are clear en-

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[6] "Youth offender means a person under the age of twenty-two years at the time of conviction.

18 U.S.C. § 5006(e).

"Committed youth offender" is one committed for treatment hereunder to the custody of the Attorney General pursuant to section 5010(b) and 5010(c) of this chapter.

18 U.S.C. § 5006(f).

titlements under the YCA which create a liberty interest protected by the Due Process Clause of the United States Constitution.

Sentencing a youth offender under the YCA does "not deprive the court of any of its present function as to sentencing." S. Rep. No. 1180, pp. 10-11, quoted in *Dorszynski* v. *United States*, 418 U.S. at 439. To interpret the YCA as permitting a second judge who sentences the petitioner on a totally unrelated matter to reevaluate the original YCA sentence would necessarily deprive the judge who imposed the only sentence currently being served of his traditional and exclusive sentencing function. The legislative history of the YCA indicates an adherence to traditional sentencing doctrine by specifying that the benefit of the Act would be available to those " 'who *in the opinion of the sentencing judge* show promise of becoming useful citizens . . . .' H.R. Rep. 2979, p. 1 (emphasis added)," quoted in *Dorszynski*, 418 U.S. 436. The decision to sentence Robinson under the YCA was left to the discretion of the judge who determined that he would benefit from its provisions for the period for which he was sentenced. That sentence was not intended to be revoked by another judge in a completely different proceeding on another matter.

In *Dorszynski* v. *United States*, 418 U.S. 424 (1974), the Supreme Court interpreted the YCA to require a trial judge to make a finding that a youth offender would derive no benefit from a YCA sentence before sentencing him as an adult. The Court held, however, that the no benefit finding was not to be read as a substantive standard which had to be satisfied. That reading, the Court reasoned, would subject the sentence to appellate review and thereby limit the sentencing discretion of the trial court:

> The intent of Congress was in accord with long-established authority in the United States vesting the sentencing function exclusively in the trial court.
>
> . . .
>
> . . . We will not assume Congress to have intended such a departure from well-established [sentencing] doctrine without a clear expression to disavow it. As our review has shown, the exclusive sentencing power of district judges was acknowledged, and Congress' intention to affirm that power was clearly indicated.
>
> . . . We hold that the discretion vested in a district judge under § 5010(d) is essentially the same as the traditional discretion vested in the court . . . .

418 U.S. at 440-42 (footnote omitted).[7] The Warden's interpretation of the YCA is such "a departure from well-established doctrine without a clear [congressional] expression to disavow it," and we reject it here.

A judicial reevaluation of a YCA sentence is not inconsistent with the YCA, the Warden insists, because the YCA expressly allows judicial reevaluation in 18 U.S.C. § 5023(a) and 18 U.S.C. § 5010(a). The relevant portions of those sections provide:

> Nothing in this chapter shall limit or affect the power of any court to suspend the imposition or

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[7] As the Supreme Court pointed out in *Dorszynski* v. *United States*, 418 U.S. at 440, n.14, it has been noted that " 'the discretion of the judge . . . in [sentencing] matters is virtually free of substantive control or guidance,' Kadish, *Legal Norm and Discretion in the Police and Sentencing Processes*, 75 Harv. L. Rev. 904, 916 (1962)."

> execution of any sentence and place a youth offender on probation. . . .

18 U.S.C. § 5023(a).

> If the court is of the opinion that the youth offender does not need commitment, it may suspend the imposition or execution of sentence and place the youth offender on probation.

18 U.S.C. § 5010(a).

There are two crucial distinctions between the statutory provisions cited and the interpretation of the YCA urged by the Warden. First, we read the statute to refer to action taken by the judge who originally imposed that sentence, not by another judge who is sentencing the youth offender in an entirely different matter. As the Supreme Court noted, "the new options of treatment and probation [are] made available to the federal *sentencing court* under the Act," *Dorszynski*, 418 U.S. at 435 (footnote omitted) (emphasis added). Second, the nature of the reevaluation proposed by the Warden is vastly different from that in the above-cited provisions. Sections 5023 and 5010(a) simply make clear that the YCA was not intended to limit the already existing power of the trial judge to give suspended sentences or probation. *See Thompson* v. *Carlson*, 624 F.2d 415, 425-26 (3d Cir. 1980) (Adams, J., dissenting).

A novel sentencing option is expressly given in section 5021(b):

> Where a youth offender has been placed on probation by the court, the court may thereafter, in its discretion, unconditionally discharge such youth offender from probation prior to the expiration of the maximum period of probation

> theretofore fixed by the court, which discharge shall automatically set aside the conviction . . . .

That section, authorizing the sentencing judge to discharge the offender unconditionally and to set aside the conviction, is consistent with the purpose of the YCA, which represents "a departure from traditional sentencing, and [is] focused primarily on correction and rehabilitation." *Dorszynski*, 418 U.S. at 433. The Warden asks us to read into this Act which has as its ultimate purpose rehabilitation, a highly unusual sentencing option that would permit one judge to reevaluate another judge's YCA sentence and impose in its place a traditional adult sentence. There is "not a word" in the statute or its legislative history "about augmenting sentences or about having a second judge in any way change them." 624 F.2d 415, 426 (3d Cir. 1980) (Adams, J., dissenting). Such a reading is contrary to the letter and the spirit of the act, and the cited provisions do not convince us otherwise.

The Warden reminds us that when the plain meaning of the words of a statute leads to an " 'absurd or futile' " result, the courts must look beyond the statutory language. *Perry* v. *Commerce Loan Co.*, 383 U.S. 392, 400 (1966) (citation omitted). Because petitioner here will eventually be subject to the influence of hardened criminals inasmuch as he will have to serve two consecutive adult sentences, it is argued that requiring him to be treated according to the terms of the YCA for the duration of the YCA sentence is a futile act. We do not agree. As Judge Adams stated in his persuasive dissent in *Thompson* v. *Carlson*,

> [I]t may be that a youth who goes through a period of treatment in a youth correction center

> would be less susceptible to the influences of hardened criminals during his subsequent confinement than one not so treated. This might be so if one accepts the motivating assumption, which was central to the enactment of the statute, that an offender is more susceptible to corrective treatment and rehabilitation as a "youth" than in later years, *Dorszynski*, 418 U.S. at 432-33, 94 S.Ct. at 3047-48.

624 F.2d at 428.

Additionally, as counsel for petitioner suggested at oral argument, the two judges who subsequently imposed the consecutive adult sentences, presumably knowing that petitioner was currently serving a YCA sentence, might have decided to sentence petitioner as an adult precisely because he was currently a YCA prisoner—believing that after the completion of YCA treatment, further treatment would not be needed; or that if petitioner had not benefited from treatment at the conclusion of his YCA sentence, he would not benefit from a second YCA sentence.

We agree with the Eighth Circuit which stated in *Mustain* v. *Pearson*, 592 F.2d 1018, 1021 (8th Cir. 1979) (citation omitted) (emphasis added):

> While the rehabilitative potential under [the YCA] might be lessened by a consecutively imposed consecutive adult sentence, this consequence stems from the subsequent offense and does not invalidate the subsequent sentence . . . *Nor could it render legally ineffective the* [*YCA*] *sentence.*

III

The Warden argues alternatively that 18 U.S.C. § 5011 should be interpreted to give the Bureau of

Prisons the discretion to decide whether a prisoner serving a YCA sentence but facing a consecutive adult sentence should be confined as an adult. The pertinent part of that section provides:

> The Director shall from time to time designate, set aside, and adapt institutions and agencies under the control of the Department of Justice for treatment. Insofar as practical, such institutions and agencies shall be used only for treatment of committed youth offenders, and such youth offenders shall be segregated from other offenders, and classes of committed youth offenders shall be segregated according to their needs.

18 U.S.C. § 5011.

The "insofar as practical" language, it is suggested, permits the Bureau of Prisons to determine that petitioner may be treated as an adult prisoner, despite the fact that he is serving a sentence imposed under the YCA. That argument was rejected by the Third Circuit in *Thompson*:

> If we were to so construe the statute, we would expand considerably the power given to the Bureau of Prisons by vesting in it that which Congress has given exclusively to the judiciary, *i.e.*, the determination whether the offender can benefit under the YCA. We find no statutory basis or policy reason for such a construction. Despite the control given the Bureau of Prisons over many aspects of the commitment of the youth offender, Congress has not given it either the power to invoke or the power to revoke the application of the statute to a committed youth offender. Even in the case of prisoners who have

> manifested serious adjustment difficulties after commitment, the Bureau of Prisons is limited to designation of an appropriate institution or, as we noted in [*United States ex rel. Dancy* v. *Arnold*, 572 F.2d 107 (3d Cir. 1978)], segregation of committed youth offenders according to their needs for treatment. 572 F.2d at 113 n. 10.

624 F.2d at 421.

As was pointed out in *United States ex rel. Dancy* v. *Arnold*, 572 F.2d at 113 n. 10, the problem of the corruptive influence of a criminally sophisticated YCA offender was foreseen by Congress; the YCA provides for treatment in maximum security institutions and requires that "classes of committed youth offenders[] be segregated according to their needs for treatment." 18 U.S.C. § 5011. For the reasons given in *Thompson*, we hold that the Bureau of Prisons does not have the power to determine that a committed youth offender serving a YCA sentence can be treated as an adult prisoner even though he was subsequently sentenced to additional terms as an adult.

In summary, we hold the trial judge properly ruled that petitioner must receive segregation and treatment according to the provisions of the YCA for the duration of his YCA sentence.[8] The district court is affirmed.

PELL, *Circuit Judge*, concurring.

The record in this case scarcely indicates that Robinson was benefitting from YCA treatment. Two

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[8] In view of our decision, we dismiss the cross-appeal from the district court's stay pending appeal, because that stay will automatically terminate when the mandate of this court issues.

federal district judges determined, one explicitly and the other in effect, that Robinson would receive no benefit from YCA treatment. These determinations would be effective in any event, whenever and however, the YCA period of the sentence was completed. That might have been very shortly after the date on which the adult sentences were entered.

While I see, on this record, no indication to think that either Robinson or society will benefit by continuing the YCA treatment, Congress, by the statute applicable in this case, has mandated the continuance.

Accordingly, I concur in Judge Swygert's opinion.

APPENDIX B

Opinion by Judge Swygert

Judge Pell concurring

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604

March 5, 1981

Before

Hon. LUTHER M. SWYGERT, Circuit Judge
Hon. JOHN M. WISDOM, *Senior Circuit Judge* *
Hon. WILBUR F. PELL, Circuit Judge

Nos. 80-1142 & 80-1123

JOHN CARROLL ROBINSON, PETITIONER-APPELLANT,
CROSS-APPELLEE

vs.

GEORGE A. RALSTON, Warden
RESPONDENT-APPELLEE, CROSS-APPELLANT

Appeals from the United States District Court
for the Eastern District of Illinois
Denton Division

No. 78-C-2347—Judge James L. Foreman

JUDGMENT—ORAL ARGUMENT

This cause was heard on the record from the United States District Court for the Eastern District

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* The Honorable John Wisdom, United States Senior Circuit Judge for the Fifth Circuit, sitting by designation.

of Illinois, Benton Division, and was argued by counsel.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby AFFIRMED, in accordance with the opinion of this Court filed this date.

APPENDIX C

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF ILLINOIS

Civil No. 78-2347

JOHN CARROLL ROBINSON, PLAINTIFF

vs.

GEORGE A. RALSTON, WARDEN, DEFENDANT

Filed January 7, 1980

ORDER

FOREMAN, Chief Judge:

Before the Court is the Report and Recommendation of the United States Magistrate for the Southern District of Illinois. The Magistrate recommended that the petitioner's request for a writ of habeas corpus be granted. The defendant, by the United States Attorney for the Southern District of Illinois, has objected to the Report and Recommendation. Therefore, the Court will proceed to the merits.

The Magistrate's opinion sets forth all of the pertinent facts and the analysis of the proper law in this matter in a very exhaustive opinion. For that reason, the Court feels no need to reiterate the facts and the law, but will only highlight certain points that it thinks pertinent at this time. The Court notes at the outset that it is very cognizant of the tremendous implications of granting a writ of habeas corpus to an individual such as the petitioner who has proven himself to be such a disciplinary prob-

lem in the federal prison system. The Court, however, after a thorough researching of the applicable statute and case law, feels that Congress has mandated the result which the Magistrate has arrived at. The Court is very wary of granting the relief in this matter, but Congress has left no question as to its intent in enacting the Youth Corrections Act. Further, Congress has set forth specific measures that the Bureau of Prison can take to deal with a YCA offender such as the petitioner in this matter. The statute clearly sets forth that "classes of committed youth offenders shall be segregated according to their needs for treatment."

Congress has set forth in very specific terms the statutory scheme under the YCA. The statute leaves little doubt as to exactly what Congress' intention was under the YCA. The statute speaks in directive and not discretionary terms. The Court has carefully reviewed the very cogent arguments raised by the United States Government in its objections to the Report and Recommendation of the Magistrate, but feels that any changes in the interpretation of the YCA must come from Congress, and is not a role of the federal courts.

This Court is especially impressed with the analysis of the Third Circuit in *United States ex rel. Dancy* v. *Arnold*, 572 F.2d 107 (3rd Cir. 1978). The *Dancy* case exhaustively reviewed the statute and its legislative history and clearly indicates to this Court that the results reached by the Magistrate in this matter is the only result this Court can arrive at. To further bolster that thinking, the Courts cites *Thompson* v. *Carlson*, Civil No. 78-973 (M.D. Pa. decided 10/3/78). As the Magistrate stated in his opinion, the facts of *Thompson* mirror the facts in

the case before the Court. In a well reasoned opinion, Judge Muir of the Middle District of Pennsylvania, adopted the reasoning in *Dancy* in rejecting all of the Government arguments in favor of denial of the writ of habeas corpus. The Court is very persuaded by *Thompson* and *Dancy* and after a thorough investigation into the statute, its legislative history and the case law interpreting the statute, the Court feels that it must adopt the Report and Recommendation of the Magistrate in this matter. The Court reiterates its hesitancy in this matter. However, once again the Court must state that any changes in the Youth Corrections Act must be made by Congress and it is not a function of the federal courts to be a super legislature when the Bureau of Prisons is unhappy with a statute of Congress. Therefore, the Report and Recommendation of the United States Magistrate is hereby ADOPTED, and it is ordered that the respondent be directed to transfer the petitioner Robinson to an institution at which he will be segregated from adult offenders and will receive treatment as prescribed by 18 U.S.C. § 5011 within thirty (30) days of this order.

IT IS SO ORDERED.

DATED: January 7, 1980

/s/ James L. Foreman
Chief Judge

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

Civil No. 78-2347

JOHN CARROLL ROBINSON, PLAINTIFF

vs.

GEORGE A. RALSTON, WARDEN, DEFENDANT

Filed August 23, 1979

REPORT AND RECOMMENDATION

MEYERS, Kenneth J.
United States Magistrate

This matter is before this Court following a hearing on Petitioner's pleading seeking a writ of habeas corpus.

Petitioner is currently incarcerated at the United States Penitentiary in Marion, Illinois. On May 10, 1974, Petitioner, age 17, was sentenced to a term of 10 years under 18 U.S.C., § 5010(c) of the Youth Correctional Act (hereinafter referred to as YCA). The sentencing judge recommended that Petitioner's release be dependent upon the attainment of, at least, an eighth grade level of education and the successful completion of a trade of his own choosing. Petitioner was initially committed to the Federal Correctional Institution (FCI) at Ashland, Kentucky.

While interned in Ashland, Petitioner was charged with and later convicted of Assaulting a Federal Officer. Pursuant to § 5010(c) of the YCA, Petitioner was given an additional 66 month sentence to run

consecutive with his prior sentence. Because of this incident, as well as additional adjustment problems, Petitioner was, thereafter, frequently transferred from one federal adult institution to other more secure institutions. While confined in the FCI at Lompoc, California, Petitioner was charged with Assaulting a Federal Officer and later sentenced to a term of one year, to run consecutively with his two prior sentences. On this occasion, however, Petitioner was sentenced pursuant to adult provisions in contrast to his prior YCA sentences. Following an intermediate stay at the United States Penitentiary in Terre Haute, Indiana, where Petitioner once again accumulated numerous misconduct reports, Petitioner was sent to his current residence, the United States Penitentiary at Marion, Illinois. Marion is the highest maximum-security adult correctional institution in the United States.

The following statutory scheme provides the necessary groundwork for proper deliberation. Section 4082 of Title 18, which was enacted long before 1950, when the YCA became law, provides in pertinent part:

> (a) A person convicted of an offense against the United States shall be committed, for such term of imprisonment as the court may direct, to the custody of the Attorney General of the United States, who shall designate the place of confinement where the sentence shall be served.
>
> (b) The Attorney General may designate as a place of confinement any available, suitable, and appropriate institution or facility . . . and may at any time transfer a person from one place of confinement to another.

The YCA sets forth for the discretionary use of federal judges, a system for the sentencing and treatment of eligible young offenders. As defined in 18 U.S.C., §§ 5006(e) and (f), a "youth offender" is a person under the age of twenty-one at the time of conviction, and a "committed youth offender" is one who is sentenced pursuant to 18 U.S.C., § 5010 (b) or (c). Petitioner's initial two sentences were issued pursuant to § 5010(c) which states:

> (c) If the court shall find that the youth offender may not be able to derive maximum benefit from treatment by the Division prior to the expiration of six years from the date of conviction it may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youth offender to the custody of the Attorney General for treatment and supervision pursuant to this chapter for any further period that may be authorized by law for the offense or offenses of which he stands convicted or until discharged by the Division as provided in section 5017(d) of this chapter.

The treatment mentioned in the above section is discussed in the following segment of the YCA at § 5011:

> Committed youth offenders not conditionally released shall undergo treatment in institutions of maximum security, medium security, or minimum security types, including training schools, hospitals, farms, forestry and other camps, and other agencies that will provide the essential varieties of treatment. The Director shall from time to time designate, set aside, and adapt institutions and agencies under the control of the

> Department of Justice for treatment. Insofar as practical, such institutions and agencies shall be used only for treatment of committed youth offenders, and such youth offenders shall be segregated from other offenders, and classes of committed youth offenders shall be segregated according to their needs for treatment.

The following two excerpts from the legislative history of the YCA aid in construing the intent behind the Act:

> By herding youth with maturity, the novice with the sophisticate, the impressionable with the hardened, and by subjecting youth offenders to the evil influences of older criminals and their teaching of criminal techniques, without the inhibitions that come from normal contacts and counteracting prophylaxis, many of our penal institutions actively spread the infection of crime and foster, rather than check, it. H.R. Rep. No. 2979, 81st Cong., 2d Sess. (1950) (hereinafter H.R. Rep. No. 2979); 1950 U.S. Code Cong. Service, p. 3985.
>
> . . . .
>
> . . . promote the rehabilitation of those who in the opinion of the sentencing judge show promise of becoming useful citizens, and so will avoid the degenerative and needless transformation of many of those persons into habitual criminals . . . . The underlying theory of the bill is to substitute for retributive punishment methods of training and treatment designed to correct and prevent antisocial tendencies. It departs from the mere punitive idea of dealing with criminals and looks primarily to the objective

idea of rehabilitation. H.R. Rep. No. 2979; 1950 U.S. Code Service, pp. 3983, 3985.

Petitioner is currently confined in the control unit in Marion. This unit is comprised of about 17 individual cells housing non-YCA offenders. Access to other sections of the institution is strictly limited and inmates of this unit are required to remain in their cells when not otherwise involved in designated prison programs. The Petitioner participates in the industrial work program offered within Marion.

Petitioner claims that his incarceration in an adult correctional institution, where no treatment facilities are available violates the provisions under which he was sentenced. Respondent, on the other hand, submits three arguments in opposition. (1) The Attorney General has complete discretion in designating the specific correctional institution in which a convicted individual is to serve his sentence. (2) Petitioner is separated from non-YCA offenders. (3) Petitioner should be secluded from YCA offenders since he has also been sentenced under adult sentencing provisions.

In support of the proposition that the Attorney General has the complete discretion to transfer prisoners sentenced under the YCA to adult penitentiaries, the Respondent has cited the following cases: *Abernathy* v. *U. S.*, 418 F.2d 288 (5th Cir. 1969); *Barr* v. *U. S.*, F.Supp. 990 (W.D. Okla. 1976); *Foote* v. *U. S.*, 306 F.Supp. 627 (D. Nev. 1969). This Court, however, is in agreement with the analysis and judgment in *Dancy* v. *Arnold*, 572 F.2d 107, 112 (3rd Cir. 1978):

> We are not persuaded by these cases. We note first that none of them make reference to the scope and purpose of the YCA sentencing scheme

and whether confinement of youth offenders in penitentiaries is consistent with the Act's rehabilitative goals. Nor is reference made to the legislative history of the Act or the congressional intent behind it. We agree with the Harvin court (*Harvin* v. *U. S.*, U.S. App. D.C. 199, 455 F.2d 675, *cert. denied*, 404 U.S. 943) that youth offenders cannot, consistent with the Act's rehabilitative purposes, be placed among adult prisoners in a penitentiary. That the Act was designed to spare youth offenders the corruptive influence of prison life and association with adult criminals is made clear by its legislative history.

The origin of the YCA is a 1942 report on punishment for crime by the Judicial Conference which recommended

> for offenders under 24 years of age the establishment of a special system, more flexible than the present penal system, giving opportunity for the training of offenders for useful life through the learning of trades and experience of living with their fellows under supervision and under more wholesome conditions than are possible in the usual prisons. The courts will have an option . . . to commit youthful offenders to such a system, in lieu of conventional imprisonment. (Report to the Judicial Conference of the Committee on Punishment for Crime (1942), at 1-2.)

Respondent's second theory is that Petitioner is, in fact, separated from non-YCA offenders. The manner in which the Petitioner is separated from non-YCA offenders, however, undermines the Re-

spondent's contention. Petitioner is placed in segregation (confined in his cell for most of the day) and, in a sense, is separated from not only non-YCA offenders but also YCA offenders. Nonetheless, Petitioner is still in close proximity to the non-YCA offenders. Petitioner's cell is but one among 17 within the control unit. Petitioner is privy to the activity in the adjacent cells which house non-YCA offenders. Moreover, Petitioner is directly in contact with the non-YCA offenders while involved in his industrial work program. Such separation/segregation neither fulfills the letter nor the spirit of the law.

Furthermore, the fact that Petitioner is in segregation would necessarily curtail his opportunity to participate in any available treatment programs. Petitioner goes further, however, and maintains that the Respondent has failed to provide any treatment program, whatsoever, as required by 18 U.S.C., § 5011. This Court agrees. The meaning of treatment as used in § 5011 is defined no more precisely than "corrective and preventive guidance and training designed to protect the public by correcting the antisocial tendencies of youth offenders . . . ." § 5006 (f). Although the definition is admittedly broad, the Respondent, nevertheless, has failed to demonstrate the establishment of a single program which complies. This Court finds that the industrial work program offered by Marion does not fall within the ambit of the statute's definition of treatment as it does not provide "corrective and preventive guidance" as required. Furthermore, the recent decision in *Lono* v. *Fenton*, 581 F.2d 645 (7th Cir. 1978), has provided a more definite interpretation of "treatment" as used in this Act which imposes a greater burden upon

the Respondent to demonstrate that a distinctive "treatment" program has been actually administered.

Respondent's final argument is that Petitioner's adult sentence negates the force and effect of the Petitioner's prior YCA sentences. The court in *Thompson* v. *Carlson*, No. 78-973 (M.D.Penn. March 12, 1979) (attached hereto), has specifically addressed this issue. The facts in *Thompson* mirror the ones in the instant case. Thompson was initially sentenced under YCA provisions. While incarcerated, he was charged with Murder. He was, thereafter, sentenced under adult sentencing provisions and sent to an adult correctional institution. The respondents in *Thompson* advanced arguments identical to the ones presented in the instant case. In reply, the court stated:

> Respondents also argue that it is incorrect to expose other youth offenders to Thompson who has been convicted of an adult sentence because 18 U.S.C., § 5011 requires the segregation of youth offenders from other offenders. It is the Court's view that this argument carries little weight. 18 U.S.C. § 5011 also provides for segregation of classes of committed youth offenders. Therefore, while it may be difficult to send Thompson to a youth corrections facility, the provisions are made in the statute for keeping Thompson separate from other youth offenders.
>
> Respondents point to the Congressional intent the Youth Corrections Act of separating persons found suitable for treatment under the Act from those not suitable for said treatment. Thus, the Respondents argue that to incarcerate Thompson with other youth offenders violates that intent of Congress. However, as noted above, the Act pro-

vides for segregation of classes of offenders. Presumably, an inmate who has been sentenced under both the Youth Corrections Act and to an adult term constitutes a separate class of youth offender and would be segregated. Id. at 4.

In conclusion, the Court believes that there are two conditions mandated by the YCA prior to the placement of a YCA offender within an adult correctional institution. (1) The YCA offender must be effectively separated from non-YCA offenders. (2) Distinctive treatment programs must actually be offered and administered to YCA offenders. See *Dancy, supra* at 113, n.9; *Brown* v. *Carlson*, 431 F.Supp. 755, 773 (W.D.Wis. 1977). Neither condition has been met by the Respondent in the instant matter.

For the above reasons, IT IS RECOMMENDED that the Petition for a Writ of Habeas Corpus be GRANTED. Further, that the Respondent be directed to transfer Robinson to an institution at which he will be segregated from adult offenders and will receive treatment as prescribed by 18 U.S.C. § 5011 within thirty (30) days.

RESPECTFULLY SUBMITTED this 23rd day of August, A. D. 1979.

/s/ Kenneth J. Meyers
KENNETH J. MEYERS
United States Magistrate

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NO. 80-2049

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1980

GEORGE A. RALSTON, WARDEN, PETITIONER

v.

JOHN CARROLL ROBINSON

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

MOTION FOR EXPEDITED CONSIDERATION OF THE
PETITION FOR A WRIT OF CERTIORARI

Shortly before the petition for a writ of certiorari in this case was due to be filed, certain facts came to our attention which, we believe, warrant the Court's expediting its consideration of the petition and acting on it before the end of this Term.

1. The issue in this case is whether an offender convicted of a crime while serving a sentence under the Youth Corrections Act (YCA), 18 U.S.C. 5005, et seq., and sentenced to a consecutive term of imprisonment as an adult, must be treated as a YCA offender for the remainder of his YCA sentence. The respondent was sentenced in 1974 to a ten-year term of imprisonment under YCA. While serving that term, he was convicted of assaulting a federal correctional officer, in

violation of 18 U.S.C. 111; the sentencing judge explicitly rejected sentencing under the YCA and instead imposed on respondent a term of five and one-half years' imprisonment as an adult. The judge specified that this sentence was to be served consecutively to the YCA term. Respondent subsequently pleaded guilty to another charge of assaulting a federal officer and was sentenced to another consecutive adult term of imprisonment. After respondent petitioned for a writ of habeas corpus, the United States District Court for the Southern District of Illinois and the United States Court of Appeals for the Seventh Circuit held that respondent had to be treated as a YCA offender for the remainder of his YCA term.

We have petitioned for a writ of certiorari to review this decision. We have learned, however, that under 18 U.S.C. 5017(d) respondent must be conditionally released from his YCA sentence on January 9, 1982. At that time he will begin serving his first adult sentence. We understand that respondent's conditional release date cannot be postponed unless he escapes from custody. Consequently, it appears that this case will become moot on January 9, 1982. 1/ If the Court considers our

1/ The Parole Commission would have authority to revoke respondent's conditional release, under certain circumstances, but such a revocation would not interrupt the adult sentence. Consequently, if the conditional release were revoked, respondent would be serving his YCA sentence and his adult sentence concurrently. Whether respondent would have to be treated as a YCA offender under those circumstances is a substantially different issue from that presented in this case, and one on which no court of appeals has ruled against the government. In any event, since revocation of respondent's conditional release could not materially affect his term or conditions of confinement, it seems virtually certain that this would not be done even were respondent to violate the conditions of his

[FOOTNOTE CONTINUED ON NEXT PAGE]

petition for certiorari in the normal course, it will not be acted upon until October 1981. If the petition were granted at that time, even expedited briefing and argument would be unlikely to allow the Court sufficient time to decide the case prior to January 9, 1982. By granting the instant motion to expedite consideration of the petition, the Court can, if it also elects to grant the petition, set this case for argument in October and decide it before it becomes moot. 2/

2. We petitioned for certiorari not only because we believe the decision of the court below is inconsistent with the central purposes of the YCA, but also because of a square conflict among the circuits and because of the peculiar significance of a decision by the Seventh Circuit on the issue presented in this case. The Seventh Circuit acknowledged that its decision is inconsistent with Thompson v. Carlson, 624 F.2d 415 (3d. Cir. 1980), where the Third Circuit held that a YCA offender who received a consecutive adult sentence of life imprisonment, from a judge who explicitly found that he would not benefit from YCA treatment, could be treated as an adult for the remainder of his

"release" from his YCA sentence.

At this time we also see no basis for asserting that the issue presented here would characteristically evade review and therefore come within the exception to the mootness doctrine specified in Southern Pacific Terminal Corp. v. I.C.C., 219 U.S. 498, 575 (1911), and its progeny. See Weinstein v. Bradford, 423 U.S. 147 (1975).

2/ Had we learned of the prospective mootness of this case earlier, we would have expedited authorization and preparation of the petition so that it could have been considered in normal course before the summer recess. Unfortunately, we did not become aware of the problem and ascertain respondent's mandatory release date until May 28, 1981.

YCA sentence. The Seventh Circuit's decision conflicts even more extensively with Outing v. Bell, 632 F.2d 1144 (4th. Cir. 1980), cert. denied, No. 80-6605 (Mar. 23, 1981); there a YCA offender received a consecutive adult sentence, and the Fourth Circuit, not relying on the second sentencing judge's finding that the offender would not benefit from YCA treatment, specifically upheld the Bureau of Prisons policy of treating such offenders as adults. Indeed, the Fourth Circuit said that allowing such an offender to retain his YCA status would be "contrary to the purposes of the Act" (632 F.2d at 1146).

We have explained in our petition why we believe that this conflict among the circuits requires resolution by this Court. Under some circumstances, the likelihood that a case would become moot before it could be decided by this Court in normal course would lead us to forgo petitioning and await a subsequent case in which the issue could be determined free of mootness problems. In the particular circumstances here, however, we do not believe that this is an appropriate course of action, for several reasons.

First, although one can confidently predict further litigation of this issue by prisoners similarly situated to respondent, there is currently no case pending that is ripe for review by this Court. 3/ It thus seems quite possible that failure to hear the instant case would postpone authoritative resolution of the issue beyond the October 1981 Term.

More important, special problems confront the Bureau of Prisons because the adverse decision is from the Seventh Circuit. The federal penitentiary at Marion, Illinois, which is within the Seventh Circuit, is the only one in the country with a level 6 security rating. For certain particularly dangerous, escape-prone, or violent inmates, it represents the only appropriate and sufficiently secure facility for their incarceration. This is not a class action; nevertheless, if the decision of the Seventh Circuit in this case is permitted to become final, substantial questions will arise as to the propriety of retaining any YCA/adult inmates in or transferring such prisoners to Marion prior to resolution of the conflict by this Court. Indeed, although we disagree with the Third Circuit's ruling in Micklus v. Carlson, 632 F.2d 227 (1980), the Bureau of Prisons is understandably concerned about the prospect

3/ King v. Kenney, No. 80-2777 (7th Cir.), now pending in the Seventh Circuit, involves a YCA offender who received a consecutive adult sentence from a state court; it thus presents a similar but somewhat different question from this case. An affirmance of the district court's ruling against the government in King would appear to conflict with the law of the Fourth Circuit but, since the state court made no finding about whether the offender would benefit from YCA treatment, would not conflict with the Third Circuit's decision in Thompson. We understand that King will be conditionally released from his YCA sentence to his consecutive adult term no later than July 23, 1982.

of protracted civil damage actions raised by that decision.

As we note in the petition, there are at present approximately 175 federal prisoners serving YCA sentences who are also subject to concurrent or consecutive adult sentences. In accordance with the Bureau's present policy, all of these prisoners have been removed from YCA programs and classified as adult prisoners upon imposition of the adult sentence. Within the Seventh Circuit there is now one other prisoner at Marion and nine at Terre Haute, Indiana (one of only four level 5 institutions receiving sentenced inmates) who are similarly situated to respondent and who would apparently be entitled to transfer out of those institutions to less secure YCA facilities under the authority of the Seventh Circuit's decision in the instant case.

In light of the foregoing considerations, it is our conclusion that it would not be appropriate for the government to leave the present decision unchallenged and the inter-circuit conflict it creates unresolved, while awaiting some subsequent opportunity to present the issue to this Court. If the Court does not find it appropriate to grant the instant motion to expedite, we would be willing, if counsel for respondent would also agree to do so, to prepare briefs in the case over the summer. Then, if the Court were to grant the petition in October, the briefs could be promptly filed and the case could perhaps be set for argument during the November session. While this course of action would still leave open the possiblity that the Court could decide the instant case before it becomes moot,

it would allow considerably less opportunity for deliberation and preparation of an opinion than would be possible with expedited consideration of the petition prior to the summer recess. 4/

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Court should grant expedited consideration of the petition for a writ of certiorari in this case.

WADE H. McCREE, JR.
Solicitor General

JUNE 1981

4/ If the Court were to grant the petition in October but not provide expedited argument, we would expect to request the Court to vacate the judgment of the court of appeals when the case becomes moot in January 1982. See United States v. Munsingwear, 340 U.S. 36, 39 (1950). While this would relieve the Bureau of Prisons of any direct consequences of the decision in the instant case, it seems likely that it would only postpone for a short while the need to have the issue resolved by this Court. In view of footnote 6 of the court of appeals' opinion (Pet. App. 6a), indicating that the opinion had been internally circulated prior to its issuance, we are not optimistic about our prospects of persuading another panel of the Seventh Circuit to reach a different result in subsequent cases presenting this issue.

Office-Supreme Court, U.S.
FILED
AUG 21 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-2049

In the Supreme Court of the United States

OCTOBER TERM, 1980

GEORGE A. RALSTON, WARDEN,

Petitioner

v.

JOHN CARROLL ROBINSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

JOINT APPENDIX

PETITION FOR WRIT OF CERTIORARI FILED JUNE 3, 1981
CERTIORARI GRANTED JUNE 22, 1981

In the Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-2049

GEORGE A. RALSTON, WARDEN,

Petitioner

v.

JOHN CARROLL ROBINSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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* The Report and Recommendation of the United States Magistrate, the judgment order of the district court, and the opinion and judgment of the court of appeals are printed as appendices to the petition for a writ of certiorari (Pet. App. 1a-29a).

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
1978	
Nov. 8	Cause transferred to this district from Southern District of Indiana.
1979	
Jan. 29	Motion to Amend, filed.
Feb. 16	Motion to Proceed in Forma Pauperis and Affidavit in Support, filed.
	Motion to Amend Pursuant to Rule 15, filed.
	Writ of Mandamus Pursuant to Title 28 USC 1361, filed.
Mar. 30	Letter in form of a motion requesting information on progress of case, filed.
Apr. 4	Motion for Appointment of Counsel, filed.
	Affidavit in Support of Request to Proceed in Forma Pauperis, filed.
	Motion Under Rule 15, filed.
May 17	Notices sent for Hearing on all Pending Motions and Pre-Trial Conference to be at the USP in Marion, Il. on Monday, June 4, 1979 at 9:30 A.M.
June 4	Cause is called for hearing on all pending motions and pre-trial conf. Appearance by Beauparlant for the U.S. and Robinson, pro so. Motions pending discussed. Motion for appt. of counsel, denied. Matter taken under advisement.
July 16	REQUEST FOR ADJUDICATION AND JUDGMENT by PLTF.
Aug. 3	WRIT . . . of mandamus.

DATE	PROCEEDINGS

1979

Aug. 24 REPORT AND RECOMMENDATION . . . petition for a Writ of Habeas Corpus be Granted. Further, that the respondent be directed to transfer Robinson to an institution at which he will be segregated from adult offenders and will receive treatment as prescribed by 18 U.S.C., § 5011 within thirty days. Copies to parties per MTA.

Sep. 6 Government's objection to report and recommendation.

Sep. 10 Sent file to (F) for final order . . . 6994691.

Oct. 22 Ptf. request for adjudication and judgment filed.

1980

Jan. 7 ENTER ORDER: . . . Therefore, the Report and Recommendation of the United States Magistrate is hereby ADOPTED, and it is ordered that the respondent be directed to transfer the petitioner Robinson to an institution at which he will be segregated from adult offenders and will receive treatment as prescribed by 18 USC § 5011 within 30 days of this order. (F) copies to parties filed hb.

Case closed JS 6 mailed.

Jan. 15 Request for Production of documents, by ptf, filed.

Jan. 21 Report of Pending Motions Hearing, Transcript, filed, By Jama Wagner.

Jan. 16 MOTION to stay pending appeal by dft., filed with supporting brief.

DATE	PROCEEDINGS

1980

Jan. 22 ORDER Before the Court is rsp. Motion to stay pending appeal. This case involves a serious issue of prison security and interpretation of the YCA. After considering all of the circumstances involved in this matter, the Court finds that justice would best be served if this case is stayed pending res.'s appeal process. If, however, a Notice of Appeal shall not be filed by respondent within 60 days of the entry of the Court's order of Jan. 7, 1980, the stay shall be vacated and the Order enforceable within 10 days thereafter. Motion to Stay Pending Appeal is hereby GRANTED upon the aforemention conditions, IT IS SO ORDERED (F), Copies to parties per ktm, filed.

Jan. 22 Response and objection for Motion to Stay by ptf., filed. with Affidavits, filed

Jan. 23 Response to request for production of documents by dft, filed

Feb. 1 Notice of Appeal filed by ptf.

Feb. 1 Sent short record to Court of Appeals, sent copy of appeal to all parties and Ct. Reporter.

Feb. 15 Sent file to Court of Appeals

Mar. 7 Notice of appeal by dft., filed, Sent up as a short record to Court of Appeals.

June 4 ORDER . . . that the MOTION for leave to file a reply to respondent's memo in support of response, and supplemental response, is hereby GRANTED and the clerk is directed to file the tendered copies of the petitioner-appellant, cross-appellee's reply. It is further Ordered that petitioner-appellant, cross-

DATE	PROCEEDINGS

1980

appelle's motion for stay pending appeal is DENIED. IT IS FURTHER ORDERED that this case will be set for oral argument at the earliest convenience of the Court in Sept. 1980 term (Court of Appeals)

July 21 ORDER . . . that Counsel call to the attention of the District Court the inaccuracies in the record, pursuant to Federal Rule of Appellate Procedure 10(e). (Court of Appeals)

July 23 Motion to Amend Record, filed.

10-1-80 ENTER ORDER: Case set for hearing on Motion to Amend Record on Mon., 10-20-80 at USP Marion before USMAG. Order to Issue Writ—Writ issued

10-14-80 MOTION to Not Appear in Person at October Hearing in Marion, filed.

10-15-80 ENTER ORDER: Before the Court is Petitioner's letter requesting that he not be returned to the USP Marion for a hearing scheduled by this Court on 10-20-80. Petitioner is presently incarcerated in Butner, N.C. . . . This being the case, the Court GRANTS Petitioner's Motion and ORDERS the Writ issued for his removal to the USP in Marion be cancelled. (M) copies to parties filed hb

10-20-80 Cause called for Hearing on Motion to Amend Record; held in Chambers. Pltf not present; Gvmt represented by Mary Beauparlant, AUSA. Fact reported that Pltf now serving Youth Corrections Act sentence. Ms. Beauparlant is to prepare an Order for Chief Judge Foreman and Magistrate Meyers to sign to amend the records.

DATE	PROCEEDINGS
1980	
10-28-80	Writs returned; used 10-20-80, filed.
11-19-80	ORDER . . . Before the Ct. is petitioner's Motion to Amend the Record. Respondent seeks to amend the record to reflect two regular adult sentences cons. to Robinson's YCA sent. IT IS THEREFORE, ORDERED that the Motion to Amend the record be GRANTED and the record be so amended (M) copies to part. kt

SUPREME COURT OF THE UNITED STATES

No. 80-2049

GEORGE A. RALSTON, WARDEN, PETITIONER

v.

JOHN CARROLL ROBINSON

ORDER ALLOWING CERTIORARI

Filed June 22, 1981

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted.

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No. 80 - 2049

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1980

GEORGE A. RALSTON, WARDEN,

Petitioner,

v.

JOHN CARROLL ROBINSON,

Respondent.

NOTICE OF
MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

To: The Solicitor General
United States Department of Justice
Washington, DC 20530

PLEASE TAKE NOTICE that on June 9, 1981, I caused to be delivered to the Supreme Court of the United States for filing respondent's Conditional Expedited Memorandum in Opposition to Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit and Motion for Leave to Proceed in Forma Pauperis.

Elizabeth M. Landes
Attorney for Respondent

Jerold S. Solovy
Robert L. Graham
Elizabeth M. Landes
JENNER & BLOCK
One IBM Plaza
Chicago, Illinois 60611
312/222-9350

Date: June 9,1981.

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JOHN CARROLL ROBINSON,

Respondent.

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

Pursuant to Rule 46.1 of the Rules of this Court, motion is hereby made that the respondent be allowed to proceed in forma pauperis before this Court.

Respondent was represented in the Court below by counsel appointed pursuant to the provisions of the Criminal Justice Act of 1964, as amended, 18 U.S.C. §3006A.

Respectfully submitted,

Jerold S. Solovy /by EML
Jerold S. Solovy
JENNER & BLOCK
Attorney for John Carroll Robinson

Of Counsel:
Robert L. Graham
Elizabeth M. Landes
JENNER & BLOCK
One IBM Plaza
Chicago, Illinois 60611
312/222-9350

Date: June 9,1981.

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JOHN CARROLL ROBINSON,

Respondent.

CERTIFICATE OF SERVICE

I hereby certify that on this ninth day of June, 1981, a copy of respondent's Conditional Expedited Memorandum in Opposition to Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit and an accompanying Motion for Leave to Proceed in Forma Pauperis was mailed from One IBM Plaza, Chicago, Illinois 60611, to The Solicitor General, United States Department of Justice, Washington, D.C. 20530. I further certify that all parties required to be served have been served.

Subscribed and sworn to
before me this ninth
day of June, 1981.

Notary Public for the State
of Illinois, County of DuPage

My commission expires September 16, 1982

Elizabeth M. Landes
JENNER & BLOCK
One IBM Plaza
Chicago, Illinois 60611
312/222-9350

One of the Attorneys for
Respondent John Carroll Robinson

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v.

JOHN CARROLL ROBINSON,

Respondent.

CONDITIONAL EXPEDITED MEMORANDUM IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Jerold S. Solovy
Robert L. Graham
Lance E. Lindblom
Elizabeth M. Landes
JENNER & BLOCK
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

Date: June 9, 1981

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Respondent.

CONDITIONAL EXPEDITED MEMORANDUM
IN OPPOSITION TO PETITION
FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Respondent respectfully prays that the petition for a writ of certiorari be denied.

In view of the motion for expedited consideration filed by petitioner, respondent has prepared this memorandum for filing only six days after receipt of the petition. Should petitioner's motion be denied, respondent requests leave to prepare and submit a more complete response to the petition.

Opinion Below

The opinion of the Court of Appeals is reported at 642 F.2d 1077 (7th Cir. 1981).

Additional Statutes Involved

18 U.S.C. 5006(g) provides:

> "Treatment" means corrective and preventive guidance and training designed to protect the public by correcting the antisocial tendencies of youth offenders.

18 U.S.C. 5017(d) provides:

> A youth offender committed under section 5010(c) of this chapter shall be released conditionally under supervision not later than two years before the expiration of the term imposed by the court. He may be discharged unconditionally at the expiration of not less than one year from the date of his conditional release. He shall be discharged unconditionally on or before the expiration of the maximum sentence imposed, computed uninterruptedly from the date of conviction.

18 U.S.C. 5023(a) provides:

> Nothing in this chapter shall limit or affect the power of any court to suspend the imposition or execution of any sentence and place a youth offender on probation or be construed in any wise to amend, repeal, or affect the provisions of chapter 231 of this title or the Act of June 25, 1910 (ch. 433, 36 Stat. 864), as amended (ch. 1, title 24, of the D. of C. Code), both relative to probation.

Additional Statement Of The Case

Respondent's Youth Corrections Act Sentence

In 1974 respondent John Carroll Robinson, then seventeen years old, was sentenced in the Superior Court of the District of Columbia to a ten-year term for second-degree

murder. 642 F.2d 1077, 1077-78 (7th Cir. 1981), Pet. App. A, 2a.*/ The trial judge sentenced Robinson under the provisions of the Youth Corrections Act ("YCA"), 18 U.S.C. § 5010(c), with the recommendation that "his release be dependent upon the attainment of at least an eighth grade level of education and the successful completion of a trade of his own choosing." The judge also recommended that, "the defendant shall participate in intensive, individual therapy on a weekly basis . . . ." 642 F.2d at 1078, Pet. App. A, 2a.

Respondent's Consecutive Adult Sentences

During his initial placement at the Federal Correctional Institution in Ashland, Kentucky, Robinson was found guilty of assaulting a federal officer. After finding that Robinson would not benefit from another YCA sentence, the trial judge in that proceeding sentenced him as an adult to a ten-year sentence pursuant to 18 U.S.C. § 4208(b). In response to a report and recommendation from the Bureau of Prisons based on their study and observation of Robinson, the judge reduced the sentence to sixty-six months. This sentence was to run consecutively to Robinson's previously imposed Youth Corrections Act sentence. 462 F.2d at 1078, Pet. App. A, 2a-3a.

After several subsequent transfers, in August 1977, Robinson pled guilty to assaulting a federal officer while serving his Youth Corrections Act sentence at the Federal Correctional Institution in Lompoc, California. 462 F.2d at 1078, Pet. App. A, 3a. Robinson was sentenced in the United States District Court for the Central District of California as an adult pursuant to 18 U.S.C. § 4205(b)(2),

---

*/ References to petitioner's appendices are denoted "Pet. App. ___, ___."

to serve a maximum term of one year and one day, which sentence was to run consecutively to his YCA sentence and adult sentence. 642 F.2d at 1078, Pet. App. A, 31. Although, at the time of sentencing, Robinson was twenty years old, the judge made no explicit finding in his sentencing order that Robinson would receive "no benefit" from a sentence under the Youth Corrections Act. Id.

Events after The Imposition Of The Consecutive Adult Sentences

After imposition of his second adult sentence, Robinson was placed in the United States Penitentiary at Terre Haute, Indiana on September 9, 1977, while he was still serving his initial YCA sentence. 642 F.2d at 1078, Pet. App. A, 3a-4a. At Terre Haute, Robinson was treated as a regular adult offender. Id. He was neither segregated from non-YCA adult offenders nor was he provided any treatment as mandated by Section 5011 of the Youth Corrections Act. Id.

After exhausting his administrative remedies, Robinson sought relief by filing a petition for a writ of habeas corpus on May 25, 1978 in the United States District Court for the Southern District of Indiana. This case was subsequently transferred to the United States District Court for the Southern District of Illinois when Robinson was transferred to the United States Penitentiary at Marion, Illinois, on September 27, 1978. 642 F.2d at 1078, Pet. App. A, 4a.

The District Court's Decision

Chief Judge Foreman of the United States District Court for the Southern District of Illinois granted Robinson a writ of habeas corpus, adopting the exhaustive Report and Recommendation of the United States Magistrate. Pet. App.

C, 18a-29a. The magistrate had found that denying Robinson both YCA-mandated treatment and segregation from non-YCA adult offenders "neither fulfills the letter nor the spirit of the law." Pet. App. D, 27a. Agreeing, Chief Judge Foreman repeatedly emphasized the clarity of the dictates of the statute:

> Congress has set forth in very specific terms the statutory scheme under the YCA. The statute leaves little doubt as to exactly what Congress' intention was under the YCA. The statute speaks in directive and not discretionary terms. The Court has fully reviewed the very cogent arguments raised by the United States Government and its objections to The Report and Recommendation of the Magistrate, but feels that any changes in the interpretation of the YCA must come from Congress, and is not a role of the federal courts. Pet. App. C, 19a.

On January 7, 1980, the District Court ordered the government to transfer Robinson from the penitentiary at Marion "to an institution at which he will be segregated from adult offenders and will receive treatment as prescribed by 18 U.S.C. § 5011 . . . ." Pet. App. C, 20a.

On January 22, 1980, the district court granted the government's motion to stay the order pending appeal. The government appealed the District Court's January 7, 1980 order granting Robinson a writ of habeas corpus, and Robinson appealed, pro se, the January 22, 1980 stay of the order. 642 F.2d at 1079, Pet. App. A, 4a-5a.

On June 17, 1980, Robinson was transferred from Marion, Illinois, to the Federal Correctional Institution at Memphis, Tennessee. The Federal Correctional Institution at Memphis does have a YCA unit, but Robinson was housed with the general adult prison population and did not receive any YCA-mandated treatment. 642 F.2d at 1079, Pet. App. A, 5a.

The Decision of the Seventh Circuit

On appeal to the United States Court of Appeals for the Seventh Circuit, the decision of the district court was unanimously affirmed. The court held that "under the provisions of the YCA, [Robinson] must be treated pursuant to YCA until the termination of his YCA-imposed sentence despite his subsequent sentencing as an adult." 642 F.2d at 1077, Pet. App. A, 2a. The court based its decision on the language of the statute, the legislative history and the decision of this court in Dorszynski v. United States, 418 U.S. 424 (1974), without reaching the constitutional issues raised by Robinson. 642 F.2d at 1079-808 & n.4, Pet. App. A., 5a-7a § n.4. The court concluded first that the YCA does not permit a judge, in proceedings involving a YCA prisoner, explicitly or by implication to reevaluate and modify the YCA sentence imposed in previous, unrelated proceedings by the original sentencing judge. 642 F.2d at 1079, Pet. App. A, 6a-7a. The court similarly rejected the assertion that the Bureau of Prisons has discretion to determine that a prisoner serving a YCA sentence, but facing a consecutive adult sentence at the expiration of his YCA term, should be confined as an adult. 642 F.2d at 1082, Pet. App. A, 13a-14a.

Judge Pell filed a separate concurring opinion emphasizing that Congress clearly has mandated the result reached by the Seventh Circuit in this case. 642 F.2d at 1083, Pet. App. A, 15a.

While his appeal was pending in the Seventh Circuit, Robinson was transferred for psychiatric evaluation to a hospital facility in Butner, North Carolina, where he is presently being held. Id. He is still serving his YCA sentence, which has a mandatory conditional release date of January 9, 1982.

Reasons for Denying the Writ

I.

The Decision of The Seventh Circuit Is Correct and Does Not Raise Questions Worthy of the Attention of This Court.

The unanimous decision below by the United States Court of Appeals for the Seventh Circuit, endorsed by every judge of that Court, 642 F.2d at 1079 n.5, Pet. App. A, 6a n.5, represents nothing more than the judicial application of the clear and explicit congressional mandate expressed in the Federal Youth Corrections Act (YCA), 18 U.S.C. § 5005 et seq. The decision below is entirely consistent with the applicable legislative history of the YCA and with the opinions of this Court. Furthermore, that decision preserves the traditional authority and role of the sentencing judge in the criminal justice system, thereby fostering the certainty and precision in the administration of justice intended by Congress. For these reasons, this case presents no issue worthy of review by this Court.

In holding in this case that "petitioner must receive segregation and treatment according to the provisions of the [Youth Corrections Act] for the duration of his YCA sentence," the Seventh Circuit merely applied the clear language of the Youth Corrections Act. 642 F.2d at 1083, Pet. App. A, 14a. Affirming the decision of the district court and the recommendation of the magistrate, the appellate court panel was unanimous in its conclusion that the statute grants no discretion either to a judge sentencing the YCA prisoner to a consecutive adult term for a subsequent offense or to the Bureau of Prisons to change the statutorily mandated conditions of his YCA sentence. The conclusion of the Seventh Circuit panel was endorsed by every judge of that court. 642 F.2d at 1079 n.5, Pet. App. A, 6a n.5.

As this Court recently has reemphasized, "in every case involving the construction of a statute, our starting point must be the language employed by Congress." Reiter v. Sonotone Corp., 442 U.S. 330, 337 (1979). In accordance with that approach, the court below noted initially that "the parties agree that the YCA contains no provision authorizing a YCA sentence to be reevaluated by another judge." 642 F.2d at 1079, Pet. App. A, 6a. The propriety of the court's refusal, in effect, to amend the statute to include such a provision cannot be questioned. As the court recognized: "[W]e hold that the statute mandates the result we reach." 642 F.2d at 1079 n.4, Pet. App. A, 51 n.4.

The YCA expressly grants to the sentencing judge considerable discretion in fashioning the appropriate sentence for a youthful offender. See 18 U.S.C. §§ 5010, 5023(a). As the decision below sets forth in detail, the legislative history of the YCA and the holding of this Court in Dorszynski v. United States, 418 U.S. 424 (1974), both recognize the broad discretion vested in the sentencing judge under the YCA. 642 F.2d at 1079-82, Pet. App. A, 7a-12a. This grant of discretion is completely in accord with the traditionally "unfettered sentencing discretion of federal district judges." Dorszynski v. United States, 418 U.S. at 437. The purposes of granting this broad discretion to the sentencing judge obviously would be defeated if a second judge, imposing a consecutive sentence on a YCA prisoner in entirely separate proceedings, could casually or arbitrarily override the considered decision of the original judge as to the appropriate sentence to be imposed for the original offense. The Seventh Circuit properly declined to infer that Congress intended such "a departure from well-established doctrine without a clear [congressional] expression to disavow it."

642 F. 2d at 1080, Pet. App. A, 9a (quoting Dorszynski v. United States, 418 U.S. at 441).

By the same token, the Seventh Circuit correctly recognized that the YCA does not empower the Bureau of Prisons to modify the sentence imposed by the trial judge. Pet. App. A, 12a-14a. Although the statute accords the Bureau considerable flexibility in implementing the dictates of the YCA, see 18 U.S.C. § 5011, it is not within the Bureau's power to determine that a prisoner serving a YCA sentence should be treated as an adult prisoner. 642 F.2d at 1082-83; Pet. App. A, 13a-14a. Accord, Thompson v. Carlson, 624 F.2d 415, 428 (3d Cir. 1980). The statute reserves for the trial judge the exclusive authority to determine whether the offender should be treated as an adult prisoner or as a YCA offender during the pendency of the sentence imposed by that judge. 642 F.2d at 1080-83; Pet. App. A, 12a-14a. This Court expressly has recognized both the administrative flexibility built into the YCA and the broad discretion it grants only to the sentencing judge. Durst v. United States, 434 U.S. 542, 545-46, 551 (1978). The decision of the Seventh Circuit thus correctly applies the provisions of the YCA and reaches a result entirely consistent with the applicable legislative history and with the opinions of this Court.

Petitioner's contention that this result will interfere with the efficient administration of the federal rectional system lacks merit. According to petitioner's figures, as of December 31, 1980, only 175 YCA inmates also were under concurrent or consecutive adult sentences. Petition at 7 n.5. The figures do not reveal how many of these are subject to consecutive sentences and consequently might be affected by the Seventh Circuit's decision. In fact, in his motion for expedited consideration, petitioner

states that only ten prisoners in the Seventh Circuit are situated similarly to respondent and would be in a position to seek a similar remedy. Petitioner's Motion for Expedited Consideration of the Petition for a Writ of Certiorari at 6 (hereinafter cited as "Motion"). Thus, this case is not one of great importance to the continued functioning of the federal prision system.

The discretion granted to the Bureau of Prisons under the YCA specifically empowers it to devise flexible solutions to practical problems encountered in implementing the YCA. 18 U.S.C. § 5011. The Bureau must take whatever steps are necessary to ensure, in carrying out the dictates of Congress, that the smooth operation of the correctional system is not disrupted and that the particular conditions of confinement for each YCA prisoner are appropriate. That these tasks may present a challenge provides no justification for the Bureau of Prisons' refusal to adhere to the YCA program mandated by Congress. See 642 F.2d at 1082-83; Pet. App. A, 13a-14a; Thompson v. Carlson, 624 F.2d at 421; United States ex rel. Dancy v. Arnold, 572 F.2d 107 (3d Cir. 1978).

The conclusion reached by the Seventh Circuit, rather than disrupting the criminal justice system as petitioner contends, Petition at 7-9, actually ensures the continued orderly operation of that system as mandated by Congress. This decision first reaffirms the limited role of the judiciary in the enforcement of federal legislation. When Congress has expressed its intent, as is the case here, the courts should apply the law as written and refrain from amendment in the guise of statutory construction. Thus, the Seventh Circuit correctly declined to deviate from the clear dictates of the statute, despite petitioner's effort to

raise questions of policy properly addressed to Congress rather than to the courts. See Petition at 8-12. Judge Pell, who concurred separately in the decision of the Seventh Circuit panel and expressed some doubt about the benefit of continuing YCA treatment for respondent, nevertheless concluded unequivocally that "Congress, by the statute applicable in this case, has mandated the continuance" of the YCA sentence. 642 F.2d at 1083; Pet. App. A, 15a. Furthermore, the Seventh Circuit's decision preserves the authority traditionally accorded to the sentencing judge. To endorse a deviation from that tradition would undermine the certainty of sentencing and would introduce an element of confusion into the administration of justice.

II.

This Case Does Not Present An Issue Ripe For Review By This Court.

In petitioner's motion to expedite consideration, the Court is urged to grant certiorari immediately, and to accelerate the briefing, argument, consideration and decision of this case. Motion at 2-3, 6-7. Petitioner argues that expedited consideration is necessary in order to complete the process of judicial review before January 9, 1982, when the case, according to petitioner, becomes moot. Motion at 2-3.

Assuming, arguendo, that petitioner is correct in his insistence that respondent's conditional release from his YCA sentence will moot the issue resolved in the Seventh Circuit's decision, that circumstance does not require the Court to rush to judgment in this case. On the contrary, that circumstance militates strongly against the granting of the writ of certiorari.

This Court should not hasten to resolve the issues in this case, for to do so will impose an unnatural deadline for decision. Although petitioner argues that the Third Circuit and Fourth Circuit each has rendered a decision that diverges in some degree from that of the Seventh Circuit in this case, Petition at 7-8, this Court is not compelled by the claimed divergence of opinion to grant the petition in this case. This is not the first time that the Court has had the opportunity to resolve this conflict. This Court previously denied certiorari in the Fourth Circuit case addressing this issue, Outing v. Bell, 632 F.2d 1144 (4th Cir. 1980), cert. denied, 101 S. Ct. 1710 (1981) (decided Mar. 23, 1981), despite the fact that the decisions of the Third and Seventh Circuits already had been handed down. See Robinson v. Ralston, 642 F.2d 1077 (7th Cir. 1981) (decided Mar. 5, 1981); Thompson v. Carlson, 624 F.2d 415 (3d Cir. 1980) (decided May 22, 1980).

Furthermore, this will not be the last opportunity the Court will have to address the question raised in this case. As Robinson, Outing and Thompson illustrate, this issue, having arisen in the courts of appeals three times in the last two years, is likely soon to recur. Among the 175 YCA prisoners who have received additional adult sentences, Petition at 7 n.5, there are undoubtedly some who have received consecutive sentences and who are being treated as adult prisoners for the duration of their YCA terms. The lower federal courts should be permitted to address the challenges that these prisoners likely will mount to the practices of the Bureau of Prisons. By declining to review this decision now, the Court will permit the district courts

and the courts of appeals to address the issue raised here in a variety of contexts and will benefit from their analyses.*/

In his concurring opinion in Watt v. Alaska, 101 S. Ct. 1673, 1681-83 (1981), Justice Stevens recently emphasized the necessity for the Court to exercise restraint in granting petitions for writs of certiorari. Noting the great demands placed on the Court's necessarily limited resources, Justice Stevens observed in Watt, which presented a question of federal statutory construction, that "the public interest would have been better served by allowing this litigation to terminate in the Court of Appeals." 101 S. Ct. at 1682. Equally applicable to this case is Justice Stevens' remark that Congress is in a position to correct any errors it perceives in the courts' application of its legislation by clarifying its intent and that a simple denial of certorari by this Court may speed that process. Id. In view of the fact that this case does not raise an issue of sufficient importance to demand immediate action, this Court should reserve its attention for a more appropriate case.

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*/ Any divergence of views that may presently exist in the circuits that have addressed this issue may resolve itself if these courts are allowed to consider the question again, especially in the light of any additional decisions rendered by their colleagues. It should be noted that, whereas the decision of the Seventh Circuit in this case reflected the unanimity of the panel and the endorsement of the entire court, both Outing in the Fourth Circuit and Thompson in the Third Circuit issued from divided panels and elicited strong and well-considered dissenting opinions. See Outing v. Bell, 632 F.2d at 1146-49 (Hall, J., dissenting); Thompson v. Carlson, 624 F.2d at 423-28 (Adams, J., dissenting).

Should a significant division among the courts of appeals emerge at a later date, the Court then may choose to grant review in a case that does not present the time constraints imposed by this case.

Conclusion

For the reasons set forth above, respondent John Carroll Robinson respectfully requests this Court to deny the Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

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No. 80-2049

In the Supreme Court of the United States

OCTOBER TERM, 1980

GEORGE A. RALSTON, WARDEN, PETITIONER

v.

JOHN CARROLL ROBINSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE PETITIONER

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QUESTION PRESENTED

Whether an offender convicted of a crime while serving a sentence under the Youth Corrections Act, 18 U.S.C. 5005 *et seq.*, and sentenced to a consecutive term of imprisonment as an adult, must be treated as a YCA offender for the remainder of his YCA sentence.

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In the Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-2049

GEORGE A. RALSTON, WARDEN, PETITIONER

v.

JOHN CARROLL ROBINSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-15a) is reported at 642 F.2d 1077. The order of the district court (Pet. App. 18a-20a) and the magistrate's report and recommendation (Pet. App. 21a-29a) are not reported.

JURISDICTION

The judgment of the court of appeals was entered on March 5, 1981 (Pet. App. 16a-17a). The petition for a writ of certiorari was filed on June 3, 1981, and granted on June 22, 1981. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTES INVOLVED

18 U.S.C. 5010(c) and (d) provide:

> (c) If the court shall find that the youth offender may not be able to derive maximum benefit from treatment by the Commission prior to the expiration of six years from the date of conviction it may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youth offender to the custody of the Attorney General for treatment and supervision pursuant to this chapter for any further period that may be authorized by law for the offense or offenses of which he stands convicted or until discharged by the Commission as provided in section 5017(d) of this chapter.
>
> (d) If the court shall find that the youth offender will not derive benefit from treatment under subsection (b) or (c), then the court may sentence the youth offender under any other applicable penalty provision.

18 U.S.C. 5011 provides:

> Committed youth offenders not conditionally released shall undergo treatment in institutions of maximum security, medium security, or minimum security types, including training schools, hospitals, farms, forestry and other camps, and other agencies that will provide the essential varieties of treatment. The Director shall from time to time designate, set aside, and adapt institutions and agencies under the control of the Department of Justice for treatment. Insofar as practical, such institutions and agencies shall be used only for treatment of committed youth offenders, and such youth offenders shall be segregated from other offenders, and classes of committed youth offenders shall be segregated according to their needs for treatment.

18 U.S.C. 5015 provides:

> (a) On receipt of the report and recommendations from the classification agency the Director may—
>
> (1) recommend to the Commission that the committed youth offender be released conditionally under supervision; or
>
> (2) allcoate and direct the transfer of the committed youth offender to an agency or institution for treatment; or
>
> (3) order the committed youth offender confined and afforded treatment under such conditions as he believes best designed for the protection of the public.
>
> (b) The Director may transfer at any time a committed youth offender from one agency or institution to any other agency or institution.

STATEMENT

1. The Youth Corrections Act, 18 U.S.C. 5005 *et seq.*, enacted in 1950 (ch. 1115, Section 2, 64 Stat. 1085), was "designed to provide a better method for treating young offenders convicted in federal courts * * *, to rehabilitate them and restore normal behavior patterns" (*Dorszynski* v. *United States*, 418 U.S. 424, 433 (1974)). It established "a system of analysis, treatment, and release" (H.R. Rep. No. 2979, 81st Cong., 2d Sess. 1 (1950)) modeled on the English Borstal system (*Durst* v. *United States*, 434 U.S. 542, 545 (1978); S. Rep. No. 1180, 81st Cong., 1st Sess. 4 (1949); H.R. Rep. No. 2979, *supra*, at 4-7). Under the Act, if a person below the age of 22 is convicted of an offense, the sentencing judge may place him on probation (18 U.S.C. 5010(a)), or, if the offense is punishable by imprisonment, sentence him to the custody of the Attorney General for "treatment and supervision pursuant to" the Act (18

U.S.C. 5010(b), (c)). Alternatively, if "the court * * * find[s] that the youth offender will not derive benefit from treatment" under the Act, it may sentence him as an adult. 18 U.S.C. 5010(d). See *Dorszynski* v. *United States, supra,* 418 U.S. at 436-443.[1]

A commitment under the Act is ordinarily for six years. 18 U.S.C. 5010(b). If an offender has been convicted of a crime for which the maximum adult penalty is more than six years' imprisonment, however, he may be sentenced under the YCA for any period not in excess of the adult maximum if the court "find[s] that [he] may not be able to derive maximum benefit from treatment" within six years. 18 U.S.C. 5010(c).

A committed youth offender is studied by the Bureau of Prisons. 18 U.S.C. 5014. Unless the Director of the Bureau chooses to transfer a committed youth offender to another agency for treatment (see 18 U.S.C. 5015(a)(2), (b)), he is authorized to "order the * * * offender confined and afforded treatment under such conditions as he believes best designed for the protection of the public" (18 U.S.C. 5015(a)(3)). "Treatment" is defined as "corrective and preventive guidance and training designed to protect the public by correcting the antisocial tendencies of youth offenders." 18 U.S.C. 5006(f). The Act provides for "the segregation of the committed [youth offender], insofar as practicable, so as * * * to avoid the influence of association with the more hardened inmates serving traditional criminal sen-

[1] If the judge needs more information on which to base his decision, he may order the offender committed for observation, study, and a report by the Bureau of Prisons. See 18 U.S.C. 5010(e), 5014.

tences." *Dorszynski* v. *United States*, *supra*, 418 U.S. at 434; 18 U.S.C. 5011.

The Director and the Parole Commission consult on a youth offender's release from custody. 18 U.S.C. 5014, 5016, 5017(a). The Commission "may at any time * * * release conditionally under supervision a committed youth offender in accordance with the provisions of [18 U.S.C.] 4206." 18 U.S.C. 5017(a). It must conditionally release an offender from custody no later than two years before the expiration of his sentence. 18 U.S.C. 5017(c), (d).

2. In 1974 respondent, then 17 years old, was convicted of second degree murder in the Superior Court of the District of Columbia.[2] The maximum adult sentence for this offense was life imprisonment; respondent was sentenced to 10 years' custody under the Youth Corrections Act, 18 U.S.C. 5010(c) (Pet. App. 2a, 21a).[3]

In 1975, while respondent was serving the YCA term in the Federal Correctional Institution at Ash-

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[2] Respondent pled guilty to this offense. When we filed our petition for a writ of certiorari, we were incorrectly advised that respondent had been convicted by a jury (Pet. 3).

[3] Respondent was sentenced on May 10, 1974 (Pet. App. 21a). In the District of Columbia at that time, an offender under the age of 22 had a "presumptive right" to be sentenced under the Youth Corrections Act (*United States* v. *Phillips*, 479 F.2d 1200, 1205 (D.C. Cir. 1973)) and was to be sentenced as an adult "only in 'the exceptional case * * *'" (*United States* v. *Coefield*, 476 F.2d 1152, 1157 (D.C. Cir. 1973), quoting *United States* v. *Waters*, 437 F.2d 722, 724 (D.C. Cir. 1970)). These standards were enforced by searching appellate review. See, *e.g.*, *United States* v. *Phillips*, *supra*, 479 F.2d at 1202-1206.

In *Dorszynski* v. *United States*, 418 U.S. 424 (1974), decided in June 1974, the Court rejected this interpretation of the YCA and held that "the discretion vested in a district

land, Kentucky, he was convicted of assaulting a federal correctional officer with a dangerous weapon, in violation of 18 U.S.C. 111 (see Pet. App. 2a, 21a).[4] The district court ordered respondent committed for a study by the Bureau of Prisons under 18 U.S.C. (1970 ed.) 4208(b) (Pet. App. 3a).[5] The court explicitly rejected sentencing under the YCA (Pet. App. 2a-3a), finding that respondent "will not benefit any further under the provisions of" the YCA (Judgment and Commitment Order, May 15, 1975). Upon receiving the Bureau of Prisons report, the court sentenced respondent to an adult term of five and one-half years' imprisonment, to run consecutively to the YCA sentence (Pet. App. 3a). The sentencing court recommended that respondent "be transferred from [the] Federal Youth Center at Ashland, [Kentucky,] to a facility providing greater security" (Judgment and Commitment Order, Sept. 2, 1975).

Respondent was accordingly placed in the Federal Correctional Institution at Oxford, Wisconsin. After a series of disciplinary reports,[6] he was trans-

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judge * * * [to reject YCA sentencing and sentence a youth offender as an adult] is essentially the same as the traditional discretion vested in * * * [a sentencing] court * * *" (*id.* at 442).

[4] We have lodged with the Clerk of this Court copies of the judgment and commitment orders accompanying each of respondent's three convictions.

[5] That statute is now 18 U.S.C. 4205(c). Both provisions specify that such a commitment for study "shall be deemed to be for the maximum sentence of imprisonment prescribed by law * * *." Presumably, it is for this reason that respondent's adult sentence for violating 18 U.S.C. 111 was initially fixed at 10 years' imprisonment (Pet. App. 3a).

[6] We have been advised by the Bureau of Prisons that from the time of his incarceration in July 1974 through July 1980,

ferred to the Federal Correctional Institution at Lompoc, California, where he again attacked a correctional officer. He pled guilty to assault on a federal officer and, in August 1977, was sentenced to an adult term of one year and one day. The sentencing judge specified that this term was to be consecutive to respondent's other sentences (Pet. App. 3a).[7]

3. Bureau of Prisons Policy Statement No. 5215.2 (Dec. 12, 1978), which deals with the custody of offenders sentenced under the YCA, excludes from its scope "any inmate * * * who is * * * also sentenced to a concurrent or consecutive adult term, whether state or federal."[8] After respondent received his adult sentences, the Bureau of Prisons, following this policy, classified respondent as an adult offender and provided him the treatment designed for adult offenders (see page 35 note 19, *infra*). In 1978 respondent, then confined in the United States Penitentiary at Terre Haute, Indiana, filed a pro se document in the United States District Court for the Southern District of Indiana. The document was treated as a petition for a writ of habeas corpus (see

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respondent had been cited in 36 incident reports. Many of his citations are for violent conduct. See Pet. App. 18a-19a, 22a.

[7] At this time, respondent was still eligible for sentencing under the YCA. The order of the district court imposing this sentence contains no explicit finding that respondent would not benefit from a YCA sentence, and the court below stated that no such finding was made (Pet. App. 3a). If there is no such finding, respondent's second adult sentence does not comply with *Dorszynski* v. *United States*, *supra*, 418 U.S. at 443-444. Respondent has not, however, raised this issue in the present litigation.

[8] The Bureau of Prisons interprets this policy not to apply if the adult sentence is for a misdemeanor.

Pet. App. 18a, 21a), presumably under 28 U.S.C. 2241. Respondent claimed that his YCA status entitled him to be moved from a penitentiary to an institution where treatment programs for YCA offenders were available.[9]

While his petition was pending before the district court, respondent was moved to the United States Penitentiary at Marion, Illinois. On the government's motion, the case was transferred to the United States District Court for the Southern District of Illinois.[10] A United States Magistrate in that district

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[9] On its face, respondent's petition challenged only the conditions of his confinement, not the "fact or length of the confinement itself" (*Bell* v. *Wolfish*, 441 U.S. 520, 527 n.6 (1979)). It is unclear whether such a challenge is properly raised by habeas corpus. Compare *Bell* v. *Wolfish*, *supra*, and *Preiser* v. *Rodriguez*, 411 U.S. 475, 499-500 (1973), with *Wilwording* v. *Swenson*, 404 U.S. 249, 251 (1971), and *Johnson* v. *Avery*, 393 U.S. 483 (1969). It appears, however, that the document filed by respondent could have been treated as a complaint seeking either mandamus (see 28 U.S.C. 1361) or an injunction (see 28 U.S.C. 1331(a)), without affecting the substantive standard. See, *e.g.*, *Leonhard* v. *Mitchell*, 473 F.2d 709, 713 (2d Cir.), cert. denied, 412 U.S. 949 (1973) ("[A] writ of mandamus properly is issued when a government official fails to comply with a specific statutory * * * direction."). In addition, it is conceivable that respondent's petition can be read to assert that if he is not classified as a YCA offender he must be released from his YCA sentence. See pages 40-45, *infra*. This claim is properly raised by habeas corpus. *Walker* v. *Wainwright*, 390 U.S. 335 (1968).

[10] The named petitioner in this case, George A. Ralston, was Warden at the Terre Haute institution at the time respondent filed his petition. When respondent's petition was transferred to the Southern District of Illinois, however, the Warden of the Marion penitentiary was apparently not substituted as a party.

Respondent was at Marion, in the Southern District of Illinois, when that district court granted relief on January 7,

recommended that relief be granted and that respondent be "transfer[red] * * * to an institution at

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1980 (Pet. App. 5a, 20a). The government appealed and obtained a stay of the district court's order (Pet. App. 4a). In June 1980, while the appeal was before the Seventh Circuit, respondent was transferred from Marion to the Federal Correctional Institution at Memphis, Tennessee (Pet. App. 5a). The court of appeals apparently was aware of this transfer (see *ibid.*). While the appeal was still pending, respondent was transferred to the Federal Correctional Institution at Butner, North Carolina, for psychiatric care. Bureau of Prisons records indicate that he was received at Butner on August 27, 1980. Respondent's counsel advised the court of appeals of this transfer (Pet. App. 5a n.3), but Warden Ralston remained at all times the named party. At the time this brief is filed, respondent remains at Butner. There is no record that the government obtained the authorization required by Fed. R. App. P. 23 before transferring respondent to Memphis and Butner. Apparently this occurred because the Bureau of Prisons failed to notify the United States Attorney of the transfer, as it is supposed to do under Bureau of Prisons Policy Statement No. 7300.13F ¶ 8(C) (Jan. 27, 1978).

It is well settled that the transfer of a habeas corpus petitioner outside the jurisdiction of the district court after that court has acted, and while the case is on appeal, does not affect the jurisdiction of the court of appeals, even if the transfer is in violation of Fed. R. App. P. 23. See, *e.g.*, *Cohen* v. *United States*, 593 F.2d 766, 767 n.2 (6th Cir. 1979); *Meck* v. *Commanding Officer*, 452 F.2d 758, 761-762 n.11 (3d Cir. 1971); *Hudson* v. *Hardy*, 424 F.2d 854, 856 n.5 (D.C. Cir. 1970); *Schultz* v. *United States*, 373 F.2d 524 (5th Cir. 1967). Petitioner remains in the custody of an official of the United States, and that official will of course comply with the decision of this Court. See *Ex parte Endo*, 323 U.S. 283, 304-306 (1944); *Meck* v. *Commanding Officer*, *supra*, 452 F.2d at 762 n.11. We will supply the Court with the name of the Warden of the Federal Correctional Institution at Butner should the Court deem it appropriate to substitute that person as the named petitioner in this case.

which he will be segregated from adult offenders and will receive treatment as prescribed by 18 U.S.C. § 5011" (Pet. App. 29a). The district court said that it was "wary" and "hesitan[t]" to order respondent treated as a YCA offender (*id.* at 19a, 20a), but it concluded that "Congress has mandated the result which the Magistrate has arrived at" (*id.* at 19a). It therefore adopted the magistrate's report and recommendation (*id.* at 20a).

The court of appeals affirmed (Pet. App. 1a-15a). It held that respondent must be treated as a YCA offender until his original YCA sentence is completed, even though he will then serve two consecutive adult terms. The court assumed *arguendo* that respondent's adult sentences constituted findings that he would no longer benefit from his YCA sentence, but it said that allowing respondent's initial YCA sentence to be affected by a subsequent adult sentence "would necessarily deprive the judge who imposed the [YCA] sentence * * * of his traditional and exclusive sentencing function" (*id.* at 8a).

In reaching this conclusion the court explicitly disagreed with *Thompson* v. *Carlson*, 624 F.2d 415 (3d Cir. 1980). The facts in *Thompson* parallel those of the present case; a committed youth offender was convicted of murder while serving his YCA sentence, and the court, after finding that he would not benefit from YCA treatment, sentenced him to a consecutive adult sentence of life imprisonment. The Third Circuit held that the offender "can be returned to an adult prisoner population for the remainder of the YCA sentence" (*id.* at 422).[11] The court below, how-

[11] It appears that only one other court of appeals has considered the precise issue presented here. In *Outing* v. *Bell*, 632 F.2d 1144 (4th Cir. 1980), cert. denied, No. 80-6005

ever, following the dissent in *Thompson*, asserted that neither the YCA nor its legislative history suggests that a YCA sentence, once imposed, may be "re-evaluat[ed]" (Pet. App. 6a) by a judge imposing a subsequent sentence on the same offender. The court rejected the government's argument that it would be pointless to provide YCA treatment to an offender who will soon be incarcerated as an adult. It also ruled that the YCA gave the Bureau of Prisons sufficient alternative means of dealing with "a criminally sophisticated YCA offender." In particular, the court suggested, the Bureau could segregate offenders like respondent from both other YCA offenders and other adult offenders (Pet. App. 14a; see *id.* at 19a, 28a-29a). The court concluded that "the Bureau of Prisons does not have the power to determine that a committed youth offender serving a YCA sentence can be treated as an adult prisoner even though he was subsequently sentenced to additional terms as an adult" (*id.* at 14a). It held that respondent "must receive segregation and treatment according to the provisions of the YCA for the duration of his YCA sentence" (*ibid.*).[12]

(Mar. 23, 1981), the Fourth Circuit explicitly upheld the Bureau of Prisons policy at issue in this case. See page 27, *infra*. But see *King* v. *Kenney*, No. TH 79-144-C (S.D. Ind. Oct. 14, 1980), appeal docketed, No. 80-2777 (7th Cir. Dec. 16, 1980).

[12] Respondent will be conditionally released from his YCA sentence, and will begin his first adult sentence, on January 9, 1982. As we explained in our Motion for Expedited Consideration of the Petition for a Writ of Certiorari, this case will become moot if the Court does not decide it before that date. Should the case become moot, we would ask the Court to vacate the judgment of the court of appeals. See *United States* v. *Munsingwear*, 340 U.S. 36, 39 (1950).

Judge Pell concurred in the opinion because he believed that "Congress * * * mandated" continued YCA treatment for offenders like respondent. But he added (Pet. App. 14a-15a):

> The record in this case scarcely indicates that [respondent] was benefitting from YCA treatment. Two federal district judges determined, one explicitly and the other in effect, that [respondent] would receive no benefit from YCA treatment. These determinations would be effective in any event, whenever and however, the YCA period of the sentence was completed. * * * I see, on this record, no indication to think that either [respondent] or society will benefit by continuing the YCA treatment * * *.

SUMMARY OF ARGUMENT

Even though respondent has committed two felonies for which he was sentenced to consecutive terms of imprisonment as an adult, the court of appeals held that he must be treated as a Youth Corrections Act offender and segregated from adult offenders for the remainder of his YCA term. This interpretation of the Youth Corrections Act is not compelled by the statutory language, is inconsistent with the construction placed on the Act by the agency charged with implementing it, and is wholly at odds with the underlying principles of the Act.

A. Nothing in the language of the YCA is specifically directed to the problem of an offender who, while serving a YCA sentence, commits a crime and receives a consecutive term of imprisonment as an adult, thus acquiring a dual status as both an adult offender and a YCA offender. The legislative history reveals that Congress, in its optimism about the new

approach, did not consider or provide for the situation in which a youth offender would commit a serious crime while rehabilitation was underway. Requiring respondent to be classified as a YCA offender is, however, inimical to the underlying principles of the YCA and is contrary to Congress's reasons for enacting the very provisions on which respondent relies. Moreover, Congress placed in the Bureau of Prisons the exclusive responsibility for making judgments about the proper form of treatment and segregation to be provided under the Act. The Bureau's considered judgment about the proper form of treatment and segregation for a class of offenders about whom the Act is silent is, therefore, entitled to great deference, particularly because it is in accord with the policies of the Act.

B. Congress envisioned that, as part of their rehabilitation, YCA offenders would be segregated "insofar as practicable, so as * * * to avoid the influence of association with the more hardened inmates * * *." *Dorszynski* v. *United States*, 418 U.S. 424, 434 (1974). The court of appeals' decision requires that respondent be segregated from adult prisoners; in practice, this means that respondent must be confined with YCA offenders. Respondent has committed three violent crimes and has twice been sentenced as an adult. He is 24 years old and has been in custody for seven years. It is difficult to believe that when Congress enacted the YCA—which it intended to reduce the "herding [of] youth with maturity, the novice with the sophisticate, the impressionable with the hardened, and * * * [the] subjecting [of] youth offenders to the evil influences of older criminals" (H.R. Rep. No. 2979, 81st Cong., 2d Sess. 2-3 (1950))—it also intended to require that young offenders be confined with inmates like respondent.

The fortuity that respondent will not begin his adult sentence until January 1982—because he must first complete a sentence imposed for an earlier crime—does not make him any less an experienced, hardened inmate and a bad influence on YCA offenders today.

The courts below suggested that offenders like respondent might be segregated from both other adult offenders and ordinary YCA offenders. But this contrived and artificial categorization of offenders bears no relation to the policies underlying the YCA or any other rational penal system. It would place together, and isolate from all others, those offenders whose rehabilitation had failed so substantially that they committed crimes, and received adult prison terms, while they were still in custody or under supervision. This is far from the healthy institutional environment that Congress sought to provide as an integral aspect of YCA treatment. In addition, segregating the relatively small number of offenders with both adult and YCA sentences from all others will make it impossible to provide these offenders with the wide range of treatment programs now available to both adult and YCA offenders.

In this case, respondent, at the time of the district court's decision, was one of only two inmates serving YCA sentences whose behavior required that they be confined at the most secure institution in the federal system; thus the decision below would have the effect of requiring that he be placed in solitary or near-solitary confinement for as long as he required such high-security custody. This cannot possibly be the result Congress intended when it enacted the YCA. These incongruities reflect the court of appeals' basic misconception: it has attempted to impose rigid categories and requirements on the Bureau of Prisons, when Congress intended to give the Bureau the flexi-

bility it needed to establish a rational system of treatment and security.

C. 1. The courts below also ordered that respondent receive the treatment designed for YCA offenders until he begins his first adult term. But Congress intended YCA treatment for offenders who would be "return[ed] * * * to society as social and rehabilitated citizens" (H.R. Rep. No. 2979, *supra*, at 5). Nothing in the Act or its legislative history suggests that YCA treatment was intended to prepare an offender for an adult prison term; indeed, Congress viewed adult imprisonment as incompatible with YCA treatment.

Moreover, Congress conceived YCA treatment as a continuous process that begins with the custodial phase and continues with a supervised, gradual reintegration into society. Both phases, in Congress's view, were integral to YCA treatment. The court of appeals in effect ordered that respondent receive the custodial phase of YCA treatment followed not by supervised release but by adult custody. This regimen has no support in the underlying principles of the YCA or of any other statute. There is no reason to believe that, in Congress's view, such a regimen would tend to rehabilitate an offender, and there is no basis for preferring it over the treatment respondent will receive as an adult.

2. Contrary to the court of appeals, this case does not involve an effort to reevaluate or alter respondent's YCA sentence, or to invade the province of the judge who imposed that sentence. Respondent's sentence entitles him to segregation and treatment to the extent—and only to the extent—that the YCA, explicitly or implicitly, provides that he shall receive such segregation and treatment. The underlying principles of the YCA make it clear that respondent

is not entitled to be segregated from adult offenders or to be provided the custodial phase of YCA treatment in the period before he begins adult custody. Speculation about what the different sentencing judges might have intended, or about what course of treatment might benefit respondent, is simply beside the point.

3. Because of its concern with the sentencing prerogatives of the judge who imposed the YCA sentence, the court of appeals overlooked another significant premise of the YCA. The legislative history and the Act itself make clear Congress's intention that decisions about the treatment of an offender should be made in light of all available information about the offender. Since he received his YCA sentence, respondent has demonstrated, to the satisfaction of two sentencing judges, that he will not benefit from YCA treatment. Indeed, respondent has proven to be an adult recidivist—precisely the kind of offender for whom YCA treatment was *not* intended. None of this information, of course, was known to the judge who imposed the YCA sentence. The Act's emphasis on fully informed sentencing makes it clear that respondent's conditions of confinement should be governed by the later determinations.

4. Finally, respondent cannot claim that it is somehow unfair or improper to require him to continue his YCA sentence when he will not receive YCA treatment. It is respondent's own acts that have made it impossible for him to receive further YCA treatment of the sort Congress envisioned, because the gradual reintegration of an offender into society is an essential part of that treatment. The fact that respondent has made further YCA treatment impossible does not make it improper to require him to serve the remainder of his YCA sentence.

Respondent received his 10-year YCA sentence under 18 U.S.C. 5010(c), which authorizes a YCA sentence of any number of years greater than six but not in excess of the maximum term of imprisonment that could be imposed on an adult guilty of the same offense. The legislative history and the structure of the YCA demonstrate that the purpose of a sentence imposed under Section 5010(c) is to keep an offender in custody for the entire period of the sentence—in order to protect the public and the interests of law enforcement—if rehabilitation should fail. Respondent's two convictions and adult sentences are excellent evidence that in his case rehabilitation has failed. Moreover, as we have explained, respondent has made further YCA treatment impossible. Under these circumstances, Congress intended that he complete his YCA sentence in order to protect the public and the interests of law enforcement; thus respondent cannot claim that his treatment as an adult offender for the remainder of that sentence deprives him of anything to which he is by law entitled as a condition of the imprisonment.

ARGUMENT

AN OFFENDER WHO COMMITS A CRIME WHILE SERVING A SENTENCE UNDER THE YOUTH CORRECTIONS ACT AND IS SENTENCED TO A CONSECUTIVE TERM OF IMPRISONMENT AS AN ADULT MAY BE TREATED AS AN ADULT OFFENDER

A. Introduction

While serving a sentence under the Youth Corrections Act, respondent committed two felonies and was twice sentenced to consecutive terms of imprisonment as an adult. The courts below held that the Bureau of Prisons must nonetheless continue to classify respondent as a YCA offender and must, for

the duration of his YCA term, segregate him from adult offenders and provide him the treatment designed for YCA offenders. The district court and one member of the court of appeals panel acknowledged that this result made little sense, but they apparently believed that the YCA mandated it (see Pet. App. 14a-15a, 18a-20a).

Neither the district court nor the court of appeals, however, identified the language in the YCA that supposedly compels this result. While the YCA provides that an offender sentenced under the Act "shall undergo treatment * * * [and] [i]nsofar as practical * * * shall be segregated from other offenders * * *" (18 U.S.C. 5011), no provision of the Act prescribes the proper classification of an offender like respondent, who, as we will show, is an adult offender in every sense relevant to the YCA, but who is completing a sentence imposed under the YCA. Indeed, the legislative history makes it clear that Congress did not specifically address the problem presented by such offenders. But the principles underlying the YCA and the design for rehabilitation that it created permit only one conclusion—that Congress did not require offenders like respondent to be treated as ordinary YCA offenders.

1. The Congress that enacted the YCA was greatly concerned with recidivism among young offenders, but it saw this exclusively as a problem among "those released from our reformatories and penal institutions * * *." H.R. Rep. No. 2979, 81st Cong., 2d Sess. 2 (1950); see, *e.g.*, S. Rep. No. 1180, 81st Cong., 1st Sess. 6-7 (1949); *Federal Corrections Act and Improvement in Parole: Hearings on H.R. 2139 and H.R. 2140 Before Subcomm. No. 3 of the House Comm. on the Judiciary*, 78th Cong., 1st Sess. 38-39 (1943) (hereinafter *1943 House Hearings*). Con-

gress apparently accepted the view of the Act's drafters that the YCA could prevent such recidivism—which is of course far more likely to occur than crimes committed while an offender is serving a sentence—among the overwhelming majority of young offenders.[13]

While such an optimistic attitude may seem unwarranted in light of subsequent experience, Congress apparently saw no need to concern itself with the possibility that a YCA offender would commit even a relatively minor crime while serving his YCA term. In the committee reports and floor debates on the YCA, there appears to be only one reference to the possibility that a YCA offender might commit a crime while serving a YCA sentence; in its discussion of unwalled institutions in the Borstal system, the House report remarked that of 600 inmates "only six * * *

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[13] For example, Congress was informed that graduates of the English Borstal system had a very low rate of recidivism. See H.R. Rep. No. 2979, *supra*, at 6-7. The House committee believed that the YCA would be "a milestone in the movement toward [the] goal" of rehabilitating nearly all young offenders. *Id.* at 10. The Senate committee approvingly quoted the statement of one of the Act's drafters: "[I]f this is enacted, we will have taken one of the most forthright and powerful steps in the furtherance of criminal justice that has been taken since our nation has been founded." S. Rep. No. 1180, *supra*, at 9, quoting *Correctional System for Youth Offenders: Hearings on S. 1114 and S. 2609 Before a Subcomm. of the Senate Comm. on the Judiciary*, 81st Cong., 1st Sess. 21 (1949) (hereinafter *1949 Hearings*) (statement of Judge Laws). The then Director of the Bureau of Prisons described to a Senate committee "probably the most vicious killer that this country has ever known" about whom he said, "if we had been able to reach him when he was young under the provisions of this bill [the proposed YCA], and keep him out of those jails and do something constructive for him, we would have saved him and saved many lives." *1949 Hearings, supra*, at 26-27.

absconded. Of these six, not one committed any offense while at large" (H.R. Rep. No. 2979, *supra*, at 6). This passage was obviously intended to show the success of the Borstal system, not to raise the question of YCA offenders who commit crimes while serving their sentences.[14] So far as we can determine, none of the witnesses in the hearings held on the YCA addressed himself to what should be done in the case of a YCA offender who commits a crime while serving his sentence. See *Correctional System for Youth Offenders: Hearings on S. 1114 and S. 2609 Before a Subcomm. of the Senate Comm. on the Judiciary*, 81st Cong., 1st Sess. (1949) (hereinafter *1949 Hearings*); *Federal Corrections Act: Hearing on S. 895 Before a Subcomm. of the Senate Comm. on the Judiciary*, 78th Cong., 1st Sess. (1943) (hereinafter *1943 Senate Hearings*); *1943 House Hearings, supra.*

It is not entirely surprising that the optimism of Congress and the Act's drafters about the new approach would cause them to overlook the potential problems presented by offenders like respondent. An offender's commission of a felony while under a YCA sentence reflects not just an ultimate failure of re-

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[14] Congress did explicitly provide that YCA offenders may be placed in maximum security institutions. 18 U.S.C. 5011; see 18 U.S.C. 5015(a)(3). But there is no indication that Congress did so in order to deal with the problem of offenders who receive adult sentences for felonies they commit while serving their YCA sentences. Instead, consistently with its concern for rehabilitation, Congress apparently intended maximum security custody for offenders who were less amenable to rehabilitative treatment. See, *e.g.*, *1949 Hearings, supra*, at 19 (statement of Judge Laws) (maximum security for " 'dead-end kids' and rough ones"); *1943 House Hearings, supra*, at 67 (statement of Judge Laws) ("[T]he boys [who] are villains and * * * have had [a] bad background * * * need maximum restrictions.").

habilitation—which was expected to occur only infrequently—but the sentencing judge's error in ordering YCA treatment for an offender who would not benefit from it (see 18 U.S.C. 5010(d)); the correctional authorities' inability either to identify or to cure the offender's propensities (see 18 U.S.C. 5011, 5014, 5015, 5016); and either the offender's proving uncontrollable even while in custody, in the case of a felony committed in an institution, or the Parole Commission's mistaken release of an unrehabilitated offender. Congress appears simply not to have anticipated, or attempted to provide for, such a series of events in which the Act did not function as intended.

2. When faced with an issue that Congress never specifically addresed, the Court must "carry into execution the will of the Legislature" by interpreting the statute in a way consistent with "the objects and policy of the law." *Kokoszka* v. *Belford*, 417 U.S. 642, 650 (1974), quoting *Brown* v. *Duchesne*, 60 U.S. (19 How.) 183, 194 (1857); see *Richards* v. *United States*, 369 U.S. 1, 11 (1962). As we will show, the court of appeals' requirement that respondent be segregated and treated as an ordinary YCA offender is fundamentally inconsistent with the policies and purposes of the YCA. Congress preferred that YCA offenders be segregated from adults; but the reasons for its preference dictate that respondent be treated as an adult and that the Bureau of Prisons not be required to place him with ordinary YCA offenders. Similarly, it is integral to the treatment program Congress envisioned that an offender be returned to society at the end of his YCA commitment. Congress never intended YCA treatment for an offender who would be released from his YCA sentence not to society but to a term of imprisonment as an adult.

Moreover, where, as here, an administrative body charged with executing the statute has drawn on its special competence and interpreted the statute in a way consistent with the statute's underlying principles, that interpretation is entitled to great deference. While the court of appeals was correct in stating that the sentencing judge alone decides whether a defendant will be sentenced as an adult or as a YCA offender (Pet. App. 13a-14a), the issue here concerns an offender who has had both a YCA and an adult sentence imposed on him. Especially because this issue was never specifically considered by Congress, the " 'construction of [the] statute by those charged with its execution should be followed unless there are compelling indications that it is wrong * * *.' " *E.I. du Pont de Nemours & Co.* v. *Collins*, 432 U.S. 46, 54-55 (1977), quoting *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367, 381 (1969).

The Bureau of Prisons' decision to classify respondent as an adult offender was made pursuant to an established policy. See Bureau of Prisons Policy Statement No. 5215.2 (Dec. 12, 1978); Bureau of Prisons Policy Statement No. 7300.136 (June 1, 1978).[15] This administrative interpretation is en-

[15] At one time, the Bureau of Prisons segregated offenders on the basis of age, treatment needs, and security needs, but not specifically on the basis of whether they were serving YCA sentences. See Policy Statement No. 7300.136, *supra*, ¶ 1. The effect of this policy was that young offenders serving adult sentences who could be confined in low security facilities, or who had particular treatment needs, might be confined with YCA offenders and given access to the same treatment programs. By contrast, YCA offenders who were particularly dangerous or likely to escape would be confined in maximum security institutions.

The Bureau of Prisons' policy was challenged in court, generally by YCA offenders in maximum security institutions.

titled to unusually great deference, not only because it involves "considerations * * * peculiarly within the province and professional expertise of corrections officials * * *" (*Pell* v. *Procunier*, 417 U.S. 817, 827 (1974)), but because it is based on the sorts of judgments that Congress specifically entrusted to the Bureau of Prisons when it enacted the YCA. The courts below held that respondent must receive treatment and segregation under 18 U.S.C. 5011 for the remainder of his YCA term; under the YCA "[t]he Bureau * * * retain[s] full control over the youth offender['s] * * * treatment" (S. Rep. No. 1180, *supra*, at 2). The Director of the Bureau of Prisons determines whether an offender will be transferred to a particular agency or institution (18 U.S.C. 5013, 5015(a)(2), (b)), determines the extent to which segregation is practical (18 U.S.C. 5011), and may "order [a] committed youth offender confined and afforded treatment *under such conditions as he believes best designed* for the protection of the public"

Although there was disagreement among the circuits (compare *Abernathy* v. *United States*, 418 F.2d 288, 289 (5th Cir. 1969) with *Harvin* v. *United States*, 445 F.2d 675, 679-681 (D.C. Cir.), cert. denied, 404 U.S. 943 (1971)), the Bureau of Prisons, after the decision in *Brown* v. *Carlson*, 431 F. Supp. 755 (W.D. Wis. 1977), established special YCA units, housing only YCA offenders, at 20 institutions. See Policy Statement No. 7300.136, *supra*, ¶ 4A, D. These units were staffed with additional counselors, and the inmates in them were given access to additional programs, particularly involving counseling, therapy, and education. Litigation continues over whether these programs afford a sufficient degree of segregation. See page 25 note 16, *infra*.

The new policy forced the Bureau to define strictly the classes of YCA offenders and adult offenders. The result was the classification at issue here.

(18 U.S.C. 5015(a)(3); emphasis added). In view of these responsibilities assigned to the Director by Congress, the Court should give great weight to the Director's decision about the appropriate form of treatment and segregation for a class of offenders about whom the Act itself is silent. See *Bell* v. *Wolfish*, 441 U.S. 520, 548 (1979) ("[P]rison administrators may be 'experts' * * * by Act of Congress * * *."). Significantly, in the Borstal system, on which the YCA was modeled, correctional authorities could transfer an offender from a Borstal institution to an adult prison whenever they thought it appropriate to do so. See *Report to the Judicial Conference of the Committee on Punishment for Crime* 56 (1942) (hereinafter *Judicial Conference Report*). Here, the Director seeks to exercise a similar authority in accordance with an articulated policy.

In any event, not only are there no "compelling indications" that the Bureau of Prisons policy is incorrect; that policy is fully in accord with the principles underlying the Act. Conversely, neither the requirement that respondent be segregated from adult offenders nor the requirement that he receive treatment as prescribed in the YCA (see Pet. App. 14a, 20a) is consistent with those principles.

B. Respondent Is Not Entitled To Be Segregated From Adult Offenders

The court of appeals held that YCA offenders with consecutive adult sentences must be segregated from other adult offenders. Unless the YCA is interpreted to require such offenders to be placed in a separate category, segregated from both ordinary YCA offenders and ordinary adult offenders—a contrived interpretation which, as we will show, is wholly impractical and undesirable—the result of the court of appeals' decision is to require offenders like respond-

ent to be mingled with ordinary YCA offenders. Congress could not have intended this result.

1. This Court has said that "[a]n integral part of the treatment program" prescribed by the YCA is "the segregation of" offenders committed under the Act, "insofar as practicable, so as * * * to avoid the influence of association with the more hardened inmates serving traditional criminal sentences." *Dorszynski* v. *United States*, *supra*, 418 U.S. at 434. The House sponsor of the bill that became the YCA explained that it was premised on "[t]he advisability of segregating youthful first offenders from hardened adult criminals * * *" (96 Cong. Rec. 15036 (1950)).[16]

[16] Congress's preference for segregation is not, of course, an inflexible mandate. Congress recognized that segregation may sometimes interfere with efforts to treat YCA offenders, or may otherwise be excessively costly; it gave the Bureau the flexibility to accommodate these conflicting needs by requiring segregation only "[i]nsofar as practical" (18 U.S.C. 5011). Even courts that emphasize the importance of segregation recognize that exceptions must be made. See, *e.g.*, *Brown* v. *Carlson*, 431 F. Supp. 755, 773 (W.D. Wis. 1977).

In the 30 years since the YCA was enacted, the Bureau of Prisons has adapted its policies on the segregation of young offenders to take account of changes in the nature and size of the YCA population in prisons and the more diverse range of treatment programs that has become available to both YCA and adult offenders. The Bureau's current policy is to segregate YCA offenders' living quarters from those of adult offenders, and to segregate some but not all programs, within institutions containing both YCA and adult offenders. (There are certain exceptions to this policy, notably in maximum security institutions. There were only 28 YCA inmates in maximum security custody at the end of June 1981. Even if they were all confined in one institution—a course which would, in the Bureau's judgment, interfere with both treatment and security—it would not be practical to segregate such a small number of offenders.)

The principal reason for maintaining mixed populations in institutions is that the number of YCA offenders is relatively

Respondent, who is now 24 years old, has received adult sentences for two violent crimes. In one instance the sentencing judge expressly determined that respondent would not benefit from a YCA sentence; in the other, such a determination was implicit in the judge's decision to impose an adult sentence. Respondent has been incarcerated since he was 17, and the sentences he is now serving will not expire until he is 31. He has an extensive disciplinary record of violent incidents. It is difficult to believe that when Congress enacted the YCA—which it intended to reduce the "herding [of] youth with maturity, the

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small and declining; establishing institutions with only YCA offenders would move many offenders far from their homes, thus weakening their ties to their families—ties that are important to rehabilitation. The principal reason for integrating programs is that more programs, and programs better suited to inmates' needs, can be provided if the Bureau need not duplicate every program by providing identical but separate sessions for adult and YCA offenders. Because this policy does not totally segregate adult and YCA offenders, it will occasionally permit a YCA offender with a consecutive adult sentence to mingle with ordinary YCA offenders, although the Bureau would seldom allow an offender with an extensive record of violent conduct comparable to respondent's to have substantial contact with ordinary YCA offenders.

A panel of the Tenth Circuit recently held that the Bureau's current YCA policy enforces too little segregation. See *Watts* v. *Hadden*, No. 80-1384 (10th Cir. June 11, 1981). Whatever the merits of the Bureau's policy, however, the effect of the court of appeals' ruling is to *require* respondent to be mingled with ordinary YCA offenders—not merely to permit it in instances when his segregation from other YCA offenders is impractical or detrimental to treatment. For the reasons we give in text, Congress could not have intended to impose such a requirement.

novice with the sophisticate, the impressionable with the hardened, and * * * [the] subjecting [of] youth offenders to the evil influences of older criminals" (H.R. Rep. No. 2979, *supra*, at 2-3; see 96 Cong. Rec. 15036 (1950))—it also intended to require that young offenders be confined with inmates like respondent.

Moreover, confining respondent with YCA offenders is plainly no more appropriate now than it will be in January 1982, when respondent begins his first adult sentence; and there can be no dispute that at that time respondent will have to be segregated from YCA offenders to the extent it is practical to do so. As the Fourth Circuit said in *Outing* v. *Bell*, 632 F.2d 1144, 1146 (1980), cert. denied, No. 80-6005 (Mar. 23, 1981), "[j]ust because [an offender with a consecutive adult sentence] had a previous YCA sentence does not make him any the less an adult offender." In holding that the Bureau of Prisons policy at issue in this case conformed to the YCA and promoted its objectives, the Fourth Circuit correctly observed that allowing a YCA offender with a consecutive adult sentence to retain his YCA status would be "contrary to the purposes of the Act" and that confining such an offender with ordinary YCA offenders "would be inconsistent * * * with the intent of the statute * * *" (*ibid.*).

2. The court of appeals offered no rationale justifying the mingling of offenders like respondent with ordinary YCA offenders. Instead, the court cited the Bureau of Prisons authority to segregate "classes of committed youth offenders * * * according to their needs for treatment" and to place some in maximum security facilities (18 U.S.C. 5011); from this the court concluded, in effect, that if offenders like respondent cannot be confined with other YCA of-

fenders they should be segregated from both ordinary YCA offenders and ordinary adult offenders (see Pet. App. 13a-14a).

This, too, is a result that Congress could not have intended. Some YCA offenders are relatively sophisticated, and some are prone to escape or to present other disciplinary problems. For these reasons, Congress recognized that the Bureau of Prisons must have the authority to segregate subclasses of YCA offenders, and occasionally to use maximum security facilities. See page 20 note 14, *supra*.[17] But the court of appeals' suggestion that YCA offenders with consecutive adult sentences should be segregated from all other categories exalts form over substance and is inconsistent with the purposes of the Act in a variety of ways, producing results that Congress plainly could not have intended.

First, Congress intended a YCA offender's contact with his fellows to be a significant aspect of the rehabilitative program. The drafters of the YCA

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[17] Even though the Act plainly authorizes the Bureau of Prisons to confine YCA offenders in maximum security facilities (18 U.S.C. 5011; see 18 U.S.C. 5015(a)(3); page 20 note 14, *supra*), some courts have limited the Bureau's authority to do so. See *United States ex rel. Dancy* v. *Arnold*, 572 F.2d 107 (3d Cir. 1978); *Harvin* v. *United States*, 445 F.2d 675, 679-681 (D.C. Cir.), cert. denied, 404 U.S. 943 (1971); but see *Abernathy* v. *United States*, 418 F.2d 288, 289 (5th Cir. 1969). We disagree with these restrictions on the Bureau's authority. The language of the statute is explicit, and nothing in the legislative history suggests that Congress intended to deny the Bureau of Prisons the authority to confine inmates presenting serious security problems in suitable institutions. In this particular case, for example, we believe that even if respondent prevails on his claim that he should be classified as a youth offender, his institutional record would still justify his confinement in a maximum security institution.

saw "normal contacts" (H.R. Rep. No. 2979, *supra*, at 3) and "experience in living with their fellows under supervision and under more wholesome conditions than are possible in the usual prisons" (*Judicial Conference Report, supra*, at 2) as central elements of the treatment program. One of the drafters of the Act explained to the Senate committee that young offenders were to be segregated from each other in ways "advantageous to their reformation." *1943 Senate Hearings, supra*, at 12 (statement of Judge Parker). The court of appeals would confine together—and isolate from all other offenders—those inmates who committed serious crimes while efforts were being made to rehabilitate them, and who were, in cases like respondent's, found by sentencing judges not likely to benefit from further treatment. These are neither "normal contacts" nor "wholesome conditions" that further rehabilitation; plainly confinement of this sort bears no resemblance to the YCA treatment Congress intended, and there is no justification for interpreting the Act to require it.

Even apart from the specific concerns of the YCA, segregating offenders like respondent from all others is an artificial classification unrelated to rehabilitation or other penological objectives. Ordinarily, in dealing with both the YCA and adult populations, the Bureau of Prisons assigns offenders to institutions on the basis of such factors as their particular needs for treatment, training, or education, the location of their homes, and considerations of security; the Bureau has found, for example, that an offender's rehabilitation will often be substantially aided if he receives frequent visits from his family. If offenders like respondent must be segregated from all others, these objectives will be compromised, yet no other valid goals will be promoted. Many offenders like

respondent will be excluded from the institutions and programs that best suit their needs because at those institutions, and in those programs, it will not be possible to segregate them from both other YCA offenders and other adult offenders. See page 25 note 16, *supra*. Thus the almost certain result of adopting the court of appeals' suggestion would be to give offenders like respondent fewer opportunities for treatment and rehabilitation than even adult prisoners have. See 18 U.S.C. 4081.

The incongruity of the court of appeals' approach is particularly clear in this case. At the time the district court ordered relief, respondent was one of two offenders serving YCA sentences whose records required that they be confined in the United States Penitentiary at Marion, Illinois, the only federal prison at security level 6—the highest maximum security level in the federal system. Respondent cannot reasonably claim that level 6 confinement was unwarranted in his case. In these circumstances, the order that respondent be segregated from adult inmates would have required placing him in near-solitary confinement that permitted contact with only the single other inmate serving a YCA sentence at that institution; and unless that inmate had also received a subsequent adult sentence, the court of appeals' approach would have required respondent to be placed in strictly solitary confinement.[18] Such an

[18] The district court, which unlike the court of appeals addressed itself to the specific conditions of respondent's custody, effectively required that respondent's contacts with all other inmates be severely limited in this way, unless respondent was to be moved to a less secure institution. At the time of the district court's decision, respondent was confined in the control unit at Marion; "[a]ccess to other sections of the institution [from the control unit] is strictly limited and in-

interpretation of the YCA furthers the interests of neither the offender nor the correctional system, and Congress could not have intended it.

These difficulties with the court of appeals' approach reflect an even more fundamental weakness. Unless the courts are to ignore Congress's obvious intention that, insofar as practical, offenders like respondent not be mingled with ordinary YCA offenders, the decision that respondent must be classified as a YCA offender necessarily interprets the statute to require that the small group of YCA offenders with consecutive adult sentences be segregated from all other classes. But under the YCA, as under the statutes governing adult prisoners (see 18 U.S.C. 4082; *Moody* v. *Daggett*, 429 U.S. 78, 88 n.9 (1976)), the Bureau of Prisons—not Congress or the courts—defines the subcategories of offenders who will be segregated from others. The Director of the Bureau of Prisons is specifically empowered to "allocate and direct the transfer of the committed youth offender to an agency or institution for treatment * * * [or] order the committed youth offender confined and afforded treatment under such conditions as he believes best designed for

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mates of this unit are required to remain in their cells when not * * * involved in designated prison programs" (Pet. App. 25a). The district court, adopting the magistrate's opinion, nevertheless ruled that respondent was insufficiently segregated because there were 16 other cells in the control unit, respondent was "privy to the activity in the adjacent cells," and respondent came in contact with adult offenders while participating in the prison's industrial work program, apparently his only activity (Pet. App. 20a, 22a, 25a). Thus, in order to comply with the lower courts' interpretation of the YCA while retaining respondent in level 6 custody, it apparently would have been necessary to bar respondent from all prison activities and to allow him to be "privy" only to the activities in the cell of, at most, one other inmate.

the protection of the public." 18 U.S.C. 5015(a)(2), (3). One of the drafters of the Act explained: "All responsibility for administering the Federal diagnostic and correctional facilities remains in the Director of the Bureau of Prisons * * *." *1949 Hearings, supra*, at 13 (statement of Judge Laws). See S. Rep. No. 1180, *supra*, at 2 ("The Bureau w[ill] retain full control over the youth offender and his treatment * * *."). Indeed, as we have said, in the Borstal system, correctional authorities had discretion to transfer young offenders to adult prisons. *Judicial Conference Report, supra*, at 56.

The court of appeals' approach effectively forces the Bureau of Prisons to segregate a particular subcategory of offenders from all others, despite the Bureau's determination that such segregation is not appropriate because it will interfere with rehabilitation and other goals, and in the face of Congress's clear intention to leave such decisions to the Bureau. This unacceptable result—or the equally unacceptable result of mingling offenders like respondent with ordinary YCA offenders—can be avoided only by permitting the Bureau to treat an offender who has received an adult sentence as an adult offender, even if he is serving a previously imposed YCA sentence.

C. Respondent Is Not Entitled To YCA Treatment

Even though respondent will enter adult custody as soon as his YCA sentence is completed, the court of appeals ordered that respondent "must receive * * * treatment according to the provisions of the YCA for the duration of his YCA sentence" (Pet. App. 14a). But YCA treatment, as Congress envisioned it, is a continuous process that begins with a custodial phase and continues with a supervised release that gradually reintegrates the offender into

the community. Congress intended that the custodial phase be designed with the supervised release in mind; and Congress saw the supervised release as completing the rehabilitative process begun during the custodial phase. Moreover, the purpose of this course of treatment was to prepare an offender for his return to society as a productive citizen, not to prepare him for adult custody.

Consequently, there is no basis in the YCA for the order issued by the court of appeals—that an offender be afforded the custodial phase of YCA treatment—when that treatment will be followed not by gradual, supervised reintegration into society but by a term of adult imprisonment. Nothing in the YCA suggests that the custodial phase of YCA treatment will prepare an offender for adult custody; indeed, to the extent that custodial YCA treatment is oriented toward an offender's return to society, it may be worse preparation for a lengthy period of adult confinement than adult treatment would be. Similarly, nothing in the YCA suggests a congressional judgment that an offender will be rehabilitated by custodial YCA treatment followed not by a gradual reintegration into society but by adult imprisonment.

1. It is clear from both the Act and its legislative history that the YCA program of treatment "contemplat[es] * * * [an offender's] return to the community as a useful citizen." (*Brisco* v. *United States*, 368 F.2d 214, 215 (3d Cir. 1966)) with his "antisocial tendencies" "correct[ed]" (18 U.S.C. 5006(f)). YCA treatment is designed to "effect rehabilitation and restore normality" so that the offender can be "return[ed] * * * to society as [a] social and rehabilitated citizen[]." H.R. Rep. No. 2979, *supra*, at 3, 5. As this Court has said, the purpose of YCA treatment is "to rehabilitate * * * [the offender] and restore

normal behavior patterns." *Dorszynski* v. *United States*, *supra*, 418 U.S. at 433.

Moreover, Congress viewed an offender's gradual and carefully supervised reintegration into the community as an integral part of YCA treatment. The Court has noted that the "careful and flexible control of * * * supervised release" is one of the "essential" aspects of YCA treatment. *Durst* v. *United States*, 434 U.S. 542, 545-546 & n.7 (1978). The House report accompanying the Act described it as "a system of analysis, treatment, and release" (H.R. Rep. No. 2979, *supra*, at 1), and one of the drafters of the Act explained that it was intended to provide "integration * * * [and] close coordination * * * in * * * placing the diagnostic and treatment procedures together with the placement in society—all of which is of course a continuous step" (*1949 Hearings*, *supra*, at 76). The Act provides that at any time after sentencing, the Parole Commission may release a youth offender "conditionally * * * under the supervision of United States probation officers [or] supervisory agents * * *." 18 U.S.C. 5017(a), 5019. The conditional release program used by the English Borstals, which Congress and the drafters of the YCA used as a model, involved "a close connection between the parole organization and the institution from which the [offender] is to be released," frequent meetings before release between the offender and parole supervisor, "definite plans * * * for [the offender's] return to the community under supervision," and then "individualized parole attention which follows the [offender] after his release" and "assist[s] him in readjusting himself to civilian life." H.R. Rep. No. 2979, *supra*, at 6. One of the authors of the YCA explained that the Act "makes it possible to diagnose the prisoner, establish a program to meet his needs,

and allow him a trial period in the community * * *." *1949 Hearings*, *supra*, at 27 (statement of James V. Bennett, Director of the Bureau of Prisons), quoted in S. Rep. No. 1180, *supra*, at 8. Another told a congressional committee, "[w]e do not want to turn him out without supervision; that is the first provision." *1949 Hearings*, *supra*, at 15 (statement of Judge Laws).

Respondent, however, will not be gradually reintegrated into society under supervision. He will not be returned to society at all when his YCA sentence is completed. Instead, he will immediately begin two adult sentences totalling over six years. Moreover, by expressly rejecting the Third Circuit's decision in *Thompson* v. *Carlson*, *supra*—where the YCA offender was sentenced to a consecutive adult term of life imprisonment—the court below made it clear that its decision would have been the same even if respondent were under an adult sentence of life imprisonment. Nothing in the text or history of the Act suggests that YCA treatment was prescribed to help an offender prepare for life in prison.

In addition, there is no reason to believe that Congress intended any offender to receive only the custodial aspects of YCA treatment, without the supervised conditional release. Under the Bureau of Prisons policy, offenders like respondent receive treatment as adults pursuant to 18 U.S.C. 4081 and the programs of the Bureau of Prisons.[19] No statute

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[19] Respondent is now receiving psychiatric care in the Federal Correctional Institution at Butner, North Carolina. Educational programs, psychological services, drug abuse programs, alcohol treatment facilities, marriage and family counseling, vocational training, employment in prison industries, work release programs, medical, dental, and optical services, and chaplaincy services are also available to adult offenders

reflects a congressional judgment that a truncated and distorted version of YCA treatment, lacking the gradual and supervised return to society that Congress thought was central to the program, would be more beneficial for an offender than treatment as an adult.

The court of appeals (Pet. App. 11a-12a), following the dissenting judge in *Thompson* v. *Carlson* (see 624 F.2d at 428), suggested that respondent must be allowed to continue in the YCA program because the benefits of custodial YCA treatment may persist through his adult confinement until his ultimate release. Of course, this is simply speculation; it is at least as likely that treatment designed to culminate in a release to society will set back an offender's rehabilitation when, at the end of the treatment, he is incarcerated as an adult instead of being released. But even if the court of appeals' speculation is correct, the possibility that an offender with a consecutive adult sentence might gain certain incidental benefits from some aspect of the YCA program does not establish that he is entitled to YCA treatment. Nearly all offenders, no matter what their age or how "incorrigible" they are, might gain some such incidental benefit.[20] The issue is whether Congress intended to require that the YCA program be offered as preparation for adult custody to offenders who would not be reintegrated into society when custodial YCA treat-

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in federal prisons. See Federal Prison System, United States Department of Justice, *Facilities 1980*.

[20] In *Dorszynski* v. *United States*, *supra*, the Court unanimously agreed that Congress did not intend YCA treatment for an "incorrigible" youth offender. See 418 U.S. at 439-440 n.13; *id.* at 449 (Marshall, J., concurring). See also S. Rep. No. 1180, *supra*, at 5. An incorrigible offender might, of course, benefit from some aspect of the program, and the benefit might persist until his release.

ment was concluded. Such a requirement is plainly inconsistent with the underlying principles of the Act.

2. The principal basis for the court of appeals' holding that respondent must be given YCA treatment was its concern that respondent's YCA sentence not be "reevaluated" (Pet. App. 6a), "revoked" (Pet. App. 8a), " 'augment[ed] * * * or * * * change[d]' " (Pet. App. 11a, quoting *Thompson* v. *Carlson*, *supra*, 624 F.2d at 426 (dissenting opinion)) by the subsequent adult sentences. Thus, when faced with the fact that respondent's consecutive adult sentences precluded carrying out essential aspects of the YCA commitment, the court attempted, in effect, to reconcile the YCA sentence and the adult sentence by preserving as much of the YCA sentence as it could.

This approach, however, misunderstands both the issue and the role of sentencing courts. Respondent's status as a recipient of both YCA and adult sentences entitles him to a particular form of custody or treatment only to the extent that Congress has provided, expressly or by implication, that that combination of sentences has such a legal effect. It is not enough for respondent to show that the judge who imposed the YCA sentence "intended" that he receive YCA treatment, or that the consecutive adult sentence does not prevent the Bureau of Prisons from continuing YCA treatment until the expiration of his YCA sentence. Even if the judge who imposed respondent's YCA sentence would have determined that respondent's YCA treatment should continue after he committed further offenses and received adult sentences—and there is no reason to treat the original YCA sentence as reflecting such a determination—the conditions of respondent's custody must be determined by the structure of the statute and its underlying purposes, not the intentions of the sentencing judge.

See *United States* v. *Addonizio*, 442 U.S. 178 (1979). The proper reconciliation of the superficially conflicting sentences is the reconciliation most consistent with the premises of the YCA; respondent must show that, given his combination of sentences, requiring continued YCA treatment is compatible with the underlying principles of the Act. For the reasons we have given, respondent can make no such showing.[21]

The court of appeals' error is reflected in its order that respondent receive custodial YCA treatment followed not by a gradual return to society but by adult imprisonment. This is a makeshift variant of a YCA sentence, lacking essential elements; it is a sentence of the court of appeals' own making. No statute prescribes it for any offender, and the Bureau of Prisons, which determines the treatment of both adult and YCA offenders (see pages 31-32, *supra*), has not chosen it. As we have said, it may be less beneficial for an offender who will subsequently begin a term of adult imprisonment than adult treatment would be. In any event, irrespective of which course may benefit offenders more, the Bureau of Prisons has determined that offenders like respondent should be classified as adults, and the underlying principles of the Act do not suggest that Congress required a contrary determination. See *Bell* v. *Wolfish*, 441 U.S. 520, 562 (1979); *Montanye* v. *Haymes*, 427 U.S. 236, 242 (1976).

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[21] In fact, the intent of at least the judge who imposed respondent's first adult sentence was almost certainly to discontinue respondent's YCA treatment at once. As the judgment and commitment orders show, that judge expressly found that respondent "will not benefit *any further* under the provisions of" the YCA (May 15, 1975 Order; emphasis added) and recommended his transfer "from [the] Federal Youth Center at Ashland, [Kentucky,] to a facility providing greater security" (Sept. 2, 1975 Order).

3. Because of its faulty approach, the court of appeals did not give sufficient weight to an additional reason that respondent's initial YCA sentence does not entitle him to continuing YCA treatment. Since he received that sentence, respondent has demonstrated, to the satisfaction of two sentencing judges, that he is not the kind of offender who will profit from YCA treatment. Moreover, these judges made their determinations on the basis of the most compelling evidence—respondent's commission of felonies while he was in YCA custody. Congress intended treatment for young offenders who "show promise of becoming useful citizens" and who "furnish[] the greatest promise of benefiting from rehabilitative treatment" (H.R. Rep. No. 2979, *supra*, at 1; S. Rep. No. 1180, *supra*, at 5). The YCA was intended to prevent recidivism, where possible; respondent, and other YCA offenders who have subsequently received adult sentences, are, in the opinion of the judges who imposed those sentences, adult recidivists.

The judges who made these determinations had information about respondent that was not available to the judge who selected the YCA sentence several years earlier. "An important element of the [YCA] program" is that punishment and treatment be tailored to the characteristics of the particular offender. *Dorszynski* v. *United States*, *supra*, 418 U.S. at 434; H.R. Rep. No. 2979, *supra*, at 5. Decisions about sentencing and conditions of confinement under the Act are to be made in light of all available information about the offender. See S. Rep. No. 1180, *supra*, at 5; *1949 Hearings*, *supra*, at 18; *1943 House Hearings*, *supra*, at 63-64. The Act itself reflects the importance of gathering information about an

offender,[22] and the view that decisions about custody and treatment were to be as fully informed as possible was central to the theory underlying the Act. See *Williams* v. *New York*, 337 U.S. 241, 247-251 (1949). This basic principle of the Act is an additional reason not to require that continuing effect be given to the YCA sentence; it has been superseded by the adult sentences imposed by judges with better information about respondent.

4. Finally, any suggestion that it is somehow unfair to require respondent to continue his YCA term when he will no longer receive YCA treatment misunderstands the purpose of the provision of the YCA under which respondent was sentenced.

As we have explained, no statute entitles respondent to the custodial portion of YCA treatment unaccompanied by a gradual return to society. Such a truncated version of the treatment program Congress designed is likely to be pointless, may well be detrimental to rehabilitation, and in any event is not prescribed by any act of Congress for any class of offenders. In a sense, therefore, it has become impossible to provide respondent with the program of YCA treatment that Congress envisioned. Because respondent committed crimes that led to his consecutive adult sentences, all he can be afforded is the custodial phase of YCA treatment in isolation. Neither Congress nor

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[22] Thus the Act provides that if a sentencing judge needs additional information about whether a young offender would benefit from treatment, he may order the offender committed for observation, study, and a report (18 U.S.C. 5010(e)). It also provides for classification centers to give the Director of the Bureau of Prisons a comprehensive report on each committed youth offender (18 U.S.C. 5014). The Director makes his decision about the proper treatment of the offender on the basis of this report (see 18 U.S.C. 5015).

the Bureau of Prisons has judged this to be a proper rehabilitative procedure. But the fact that respondent, by his own acts, has made YCA treatment of the sort Congress envisioned impossible does not mean that it is unfair or improper to require him to serve the remainder of his YCA sentence.

Respondent received his 10 year YCA sentence under 18 U.S.C. 5010(c). A sentencing judge may proceed under Section 5010(c) only if the offender has been convicted of a crime or crimes punishable by an adult sentence of more than six years' imprisonment; in such cases, Section 5010(c) authorizes the judge to impose a YCA sentence of more than six years, provided it is not in excess of the adult maximum.

The legislative history demonstrates that even if it becomes impossible to continue rehabilitative treatment of an offender serving a sentence under Section 5010(c), the offender should continue to serve that sentence. Section 5010(c) was designed to allow a judge to ensure that an offender would be kept in custody for a certain period even if rehabilitation failed. The House report accompanying the YCA explained that Section 5010(c) was to be used when "the sentencing judge entertains doubt as to whether rehabilitation can be accomplished within 4 years * * *." It then added: "This affords opportunity for the sentencing court to avail itself of the provisions of this bill and at the same time insure protection of the public if efforts at rehabilitation fail." H.R. Rep. No. 2979, *supra*, at 4. The chairman of the Judicial Conference committee that drafted the Act offered the same explanation at Senate hearings. *1949 Hearings*, *supra*, at 62 (statement of Judge Phillips). Another member of the committee, in giving an explanation of the

draft YCA "[for] the record," explained that Section 5010(c) was to be used "if the judge feels that a youth offender convicted of an offense calling for a long term under existing statutes might not respond to treatment within 6 years or that so short a term might have an adverse effect on enforcement of the law * * *." *1949 Hearings, supra*, at 12, 13 (statement of Judge Laws).[23] He elaborated (*id.* at 15-18):

> If a judge * * * has misgivings about the offender, and he thinks 4 years will not be enough for his imprisonment * * * he will not simply say, "I turn you over to the Attorney General for attention as a youth offender"; what he would do, then, would be that he would stipulate the time in addition to the 4 years that he feels the offender ought to serve * * *.

Only this understanding of Section 5010(c)—that it is intended to retain an offender in custody even if rehabilitation fails or becomes impossible—can make that provision consistent with the premises underlying the YCA. For example, there is no other apparent explanation for permitting judges to impose a YCA sentence that continues until an offender is an adult in his late twenties or thirties—or even longer (see, *e.g.*, *United States ex rel. Dancy* v. *Arnold*, 572 F.2d 107, 109 (3d Cir. 1978) (20-year YCA sentence))[24]—when younger offenders were, in Con-

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[23] A representative of the America Law Institute explained the analogous provision of the Institute's model youth corrections act (see page 43 note 25, *infra*) in the same way: "The purpose of this [provision] is to protect the public against that small percentage of mentally abnormal killers, aggressive sexual deviates, and so on, who are recognizably dangerous, so long as they remain dangerous." *1943 House Hearings, supra*, at 46.

[24] The Bureau of Prisons advises us that as of June 30, 1981, there were 152 YCA offenders serving sentences of 10

gress's view, the proper objects of rehabilitative treatment. " '[P]risoners under the age of 24 * * * [are] the most difficult to handle but at the same time furnish[] the greatest promise of benefiting from rehabilitative treatment.' " S. Rep. No. 1180, *supra*, at 5, quoting Dept. of Justice report of Oct. 6, 1949; see *id.* at 6; H.R. Rep. No. 2979, *supra*, at 2, 3; *Judicial Conference Report*, *supra*, at 32. Like the Borstal system, YCA rehabilitation was designed to deal with the "special causations[] which occur in the period between adolescence and manhood" (*ibid.*), "the causes which contribute to antisocial conduct * * * in the period between adolescence and maturity [and] disappear when the youth reaches full maturity" (H.R. Rep. No. 2979, *supra*, at 3). YCA treatment was intended to take advantage of the "physical, psychological, and social characteristics of youth which distinguish them from both children and adults." *Judicial Conference Report*, *supra*, at 37; see S. Rep. No. 1180, *supra*, at 4.

Similarly, the Borstal system emphasized relatively short periods of confinement and extensive contacts with the outside world. See H.R. Rep. No. 2979, *supra*, at 5-6; S. Rep. No. 1180, *supra*, at 4. As Section 5010(b) shows, Congress considered a six-year YCA sentence, with conditional release required after no more than four years, appropriate for rehabilitative treatment.[25] It is unlikely that Congress

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to 15 years, 20 serving sentences of 15 to 20 years, and eight serving sentences longer than 20 years.

[25] Offenders remained subject to the Borstal system for no more than four years, of which no more than three years were to be spent in custody. *Judicial Conference Report*, *supra*, at 56. The draft of the YCA proposed by the Judicial Conference provided only for what is now a Section 5010(b) sentence; there was no provision comparable to Section 5010(c). See *Judicial Conference Report*, *supra*, at 17,

believed YCA treatment would ordinarily rehabilitate an offender who entered an institution in his teens and was not released until 10 or 15 years later; yet Section 5010(c) authorizes such sentences. This confirms that when Congress authorized sentences that continued YCA offenders in custody for long periods concluding well beyond their youth, it intended those sentences to serve other objectives besides rehabilitation and treatment—objectives such as "protect[ing] the public" (H.R. Rep. No. 2979, *supra*, at 4) and avoiding "an adverse effect on enforcement of the law" (*1949 Hearings*, *supra*, at 13). Therefore, when rehabilitation fails—or when, as here, rehabilitative treatment of the form Congress intended under the YCA becomes impossible—it is still proper to continue an offender in custody in order to serve those objectives.

Respondent's two adult sentences are the best possible evidence that efforts to rehabilitate him have failed. See D.C. Code Ann. § 22-3202(d)(1) (1973) (offender who commits two or more violent crimes with dangerous weapons is ineligible for YCA sentence). Moreover, as we have explained, respondent has made further YCA rehabilitative treatment impossible. This is the kind of circumstance in which Congress intended that, to ensure protection of the public, an offender must serve his entire sentence under Section 5010(c). In addition, since rehabilitative treatment is not the only purpose of a Section 5010(c) sentence, respondent, unlike the persons who challenged their custody in such cases as *O'Connor* v. *Donaldson*, 422

18-19. Another model youth corrections act, drafted by the American Law Institute, provided for a five-year term of custody that could be renewed any number of times by applying to the court. *1943 House Hearings*, *supra*, at 46.

U.S. 563, 574-575 (1975); *McNeil* v. *Director, Patuxent Institution*, 407 U.S. 245, 250 (1972); and *Jackson* v. *Indiana*, 406 U.S. 715 (1972), cannot claim that continued custody under his YCA sentence is improper because that sentence no longer serves any purpose.[26]

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[26] We recognize that many of these arguments would not apply with equal force if this case involved an offender sentenced under 18 U.S.C. 5010(b) for a crime carrying a maximum adult sentence of less than six years' imprisonment. For such an offender, rehabilitative treatment is "in a sense * * * the *quid pro quo* for a longer confinement but under different conditions and terms * * *" (*Carter* v. *United States*, 306 F.2d 283, 285 (D.C. Cir. 1962) (Burger, J.)).

But the question of how to proceed when such an offender is sentenced to a consecutive term of imprisonment as an adult is not presented by this case, and it should not be decided by the Court at this time. See *Thompson* v. *Carlson*, *supra*, 624 F.2d at 422 n.9 (leaving this question open). The decision whether to release such an offender from his YCA sentence to his adult term rests with the Parole Commission. See 18 U.S.C. 5017(a); 18 U.S.C. 4206. The Commission establishes a date on which the offender will be released from custody entirely; the date of his release from the YCA sentence to the adult sentence is adjusted to comply with statutory requirements. See United States Parole Commission, United States Department of Justice, *Procedures Manual* 61-62 (Mar. 1, 1981). Under Parole Commission guidelines, the date of the offender's release would be determined in large part by the severity of his offenses, including the offense for which he received the YCA sentence. See 18 U.S.C. 4206(a); 28 C.F.R. 2.18-2.20. Thus, other things equal, an offender serving a sentence under Section 5010(b) for a more minor offense will be released earlier.

Under these circumstances, it is possible that no offender who receives a consecutive term of imprisonment as an adult while serving a sentence under 18 U.S.C. 5010(b) will be able to make any colorable claim that unless given YCA treatment, he is entitled to an earlier release. In any event, since the

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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arguments that would be relied on by an offender in that situation are not available to respondent, they have no bearing on the proper disposition of this case.

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No. 80-2049

In the Supreme Court of the United States

OCTOBER TERM, 1980

GEORGE A. RALSTON, WARDEN,

Petitioner,

v.

JOHN CARROLL ROBINSON,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT

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ADDITIONAL CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 5006 (e) and (f) provide:

> (e) "committed youth offender" is one committed for treatment hereunder to the custody of the Attorney General pursuant to sections 5010(b) and 5010(c) of this chapter;
>
> (f) "treatment" means corrective and preventive guidance and training designed to protect the public by correcting the antisocial tendencies of youth offenders.

18 U.S.C. § 5010 provides:

> (a) If the court is of the opinion that the youth offender does not need commitment, it may suspend the imposition or execution of sentence and place the youth offender on probation.
>
> (b) If the court shall find that a convicted person is a youth offender, and the offense is punishable by imprisonment under applicable provisions of law other than this subsection, the court may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youth offender to the custody of the Attorney General for treatment and supervision pursuant to this chapter until discharged by the [United States Parole] Commission as provided in section 5017(c) of this chapter; or
>
> (c) If the court shall find that the youth offender may not be able to derive maximum benefit from treatment by the Commission prior to the expiration of six years from the date of conviction it may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youth offender to the custody of the Attorney General for treatment and supervision pursuant to this chapter for any further period that may be authorized by law for the offense or offenses of which he stands convicted or until discharged by the Commission as provided in section 5017(d) of this chapter.

(d) If the court shall find that the youth offender will not derive benefit from treatment under subsection (b) or (c), then the court may sentence the youth offender under any other applicable penalty provision.

(e) If the court desires additional information as to whether a youth offender will derive benefit from treatment under subsections (b) or (c) it may order that he be committed to the custody of the Attorney General for observation and study at an appropriate classification center or agency. Within sixty days from the date of the order, or such additional period as the court may grant, the Commission shall report to the court its findings.

18 U.S.C. § 5017 provides:

(a) The Commission may at any time after reasonable notice to the Director [of the Bureau of Prisons] release conditionally under supervision a committed youth offender in accordance with the provisions of section 4206 of this title. When, in the judgment of the Director, a committed youth offender should be released conditionally under supervision he shall so report and recommend to the Commission.

(b) The Commission may discharge a committed youth offender unconditionally at the expiration of one year from the date of conditional release.

(c) A youth offender committed under section 5010(b) of this chapter shall be released conditionally under supervision on or before the expiration of four years from the date of his conviction and shall be discharged unconditionally on or before six years from the date of his conviction.

(d) A youth offender committed under section 5010(c) of this chapter shall be released conditionally under supervision not later than two years before the expiration of the term imposed by the court. He may be discharged unconditionally at the expiration of not less than one year from the date of his conditional re-

lease. He shall be discharged unconditionally on or before the expiration of the maximum sentence imposed, computed uninterruptedly from the date of conviction.

(e) Commutation of sentence authorized by any Act of Congress shall not be granted as a matter of right to committed youth offenders but only in accordance with rules prescribed by the Director with the approval of the Commission.

The Fifth Amendment to the United States Constitution provides, in pertinent part:

[N]or shall any person be subject for the same offense to be twice put in jeopardy of life or limb; . . . nor be deprived of life, liberty, or property, without due process of law . . . .

In the Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-2049

GEORGE A. RALSTON, WARDEN,

Petitioner,

v.

JOHN CARROLL ROBINSON,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT

STATEMENT OF THE CASE

In 1974, respondent John Carroll Robinson, then seventeen years old, was sentenced in the Superior Court of the District of Columbia to a ten-year term for second-degree murder. 642 F.2d 1077, 1077-78 (7th Cir. 1981), Pet. App. A, 2a.[1] The trial judge sentenced Robinson under

[1] References to the appendices to the Petition for a Writ of Certiorari in this case are denoted "Pet. App. ____, ____."

the provisions of the Youth Corrections Act ("YCA" or "the Act"), 18 U.S.C. § 5010(c), with the recommendation that "his release be dependent upon the attainment of at least an eighth grade level of education and the successful completion of a trade of his own choosing." The judge also recommended that "the defendant shall participate in intensive, individual therapy on a weekly basis . . . ." 642 F.2d at 1078, Pet. App. A, 2a.

In 1975, Robinson was found guilty of assaulting a federal officer while he was in prison. He was sentenced to a sixty-six month adult sentence to follow his YCA sentence. 462 F.2d at 1078, Pet. App. A, 2a-3a. In 1977, Robinson pled guilty to assaulting a federal officer and was sentenced as an adult to serve a consecutive term of one year and one day. 462 F.2d at 1078, Pet. App. A, 3a.

Despite the fact that his initial sentence designated him as a YCA prisoner, apparently Robinson has never been segregated from non-YCA prisoners nor given any special YCA treatment as mandated by the sentencing judge and by the YCA. The government concedes that no YCA treatment has been accorded Robinson since he received his adult sentences. Pet. Brief at 7.[2]

The District Court's Decision.

Robinson was granted a writ of habeas corpus by the United States District Court for the Southern District of Illinois. Chief Judge Foreman found that denying Robinson YCA-mandated treatment and segregation from non-YCA adult offenders neither fulfills the letter nor the spirit of the law. The district court emphasized the clarity of the dictates of the statute:

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[2] References to the Brief for the Petitioner in this case are denoted "Pet. Brief at ____."

> Congress has set forth in very specific terms the statutory scheme under the YCA. The statute leaves little doubt as to exactly what Congress' intention was under the YCA. The statute speaks in directive and not discretionary terms. The Court has fully reviewed the very cogent arguments raised by the United States Government and its objections to The Report and Recommendation of the Magistrate, but feels that any changes in the interpretation of the YCA must come from Congress, and is not a role of the federal courts.

Pet. App. C, 19a.

On January 7, 1980, the district court ordered the government to transfer Robinson from the penitentiary at Marion "to an institution at which he will be segregated from adult offenders and will receive treatment as prescribed by 18 U.S.C. § 5011 . . . ." Pet. App. C, 20a. The execution of that order has been stayed pending appeal.

The Decision Of The Seventh Circuit.

On appeal to the United States Court of Appeals for the Seventh Circuit, the decision of the district court was unanimously affirmed. The court held that "under the provisions of the YCA, [Robinson] must be treated pursuant to the YCA until the termination of his YCA imposed sentence despite his subsequent sentencing as an adult." 642 F.2d at 1077, Pet. App. A, 2a. The court based its decision on the language of the statute, the legislative history, and the decision of this Court in *Dorszynski* v. *United States,* 418 U.S. 424 (1974). 642 F.2d at 1079-80, Pet. App. A, 5a-7a. The court concluded that the YCA does not permit a subsequent judge or the Bureau of Prisons to reevaluate and modify the YCA sentence imposed by the original sentencing judge. 642 F.2d at 1079, 1082, Pet. App. A, 6a-7a, 13a-14a. Thus, the court did not reach constitutional issues raised by Robinson. 642 F.2d at 1079 n.4, Pet. App. A, 5a n.4.

SUMMARY OF ARGUMENT

I. A. Congress enacted the YCA to provide a special alternative system of sentencing and treatment for young offenders designed to promote their rehabilitation. In the YCA, Congress expanded the sentencing options available to judges sentencing youthful offenders. The YCA dictates that those offenders selected by judges for YCA treatment be separated from the mainstream of the prison population and afforded special rehabilitative programs. Segregation from non-YCA prisoners and rehabilitative treatment are the cornerstones of the regimen Congress created. *Durst* v. *United States*, 434 U.S. 542, 545-47 (1978). The Bureau of Prisons improperly has excluded an entire category of YCA prisoners, who, like Robinson, have incurred consecutive adult sentences, from treatment under the YCA.

B. The language of the Act is unambiguous. The YCA delegates to the sentencing judge alone the authority to determine whether an offender under the age of twenty-two, regardless of the nature of his crime, will benefit from the special treatment the YCA mandates. The YCA is not limited in application to youths who commit minor offenses. The sentencing judge's decision regarding the application of the YCA in a particular case is not reviewable, *Dorszynski* v. *United States*, 418 U.S. 424 (1974); nor does the Act provide any mechanism by which an offender's status as a YCA prisoner may be revoked or forfeited. The language of the YCA, its legislative history, and the cases applying the Act unmistakably dictate that a prisoner sentenced under the YCA remains subject to the terms of the statute until the expiration of his YCA sentence, regardless of any consecutive adult sentences subsequently imposed upon him.

II. A. The Bureau of Prisons cannot substitute its penological philosophy for the congressional will. The improper denial of YCA treatment to Robinson cannot be justified on the basis of a policy statement promulgated by the Bureau of Prisons. A policy that excludes YCA prisoners with consecutive adult sentences from YCA treatment is void because it conflicts with the dictates of the statute. The Bureau improperly has usurped the legislative function by attempting to modify the scope of the Act.

B.1. Contrary to the assertions of the Bureau, a consecutive adult sentence imposed by a subsequent sentencing judge is not intended to and may not affect the YCA sentence the offender currently is serving. As the Seventh Circuit correctly held, to treat the consecutive adult sentence imposed by the subsequent judge as superseding the YCA sentence contravenes both the clear dictates of the YCA and longstanding sentencing doctrine. *Thompson* v. *Carlson,* 624 F.2d 415 (3d Cir. 1980), in which the United States Court of Appeals for the Third Circuit adopts the Bureau's position on this issue, was wrongly decided and was properly rejected by the Seventh Circuit.

B.2. The Bureau of Prisons' authority under the YCA is strictly limited to implementing the specific dictates of the statute. The YCA removes from the prison authorities much of the discretion they routinely exercised prior to its enactment. For the special class of prisoners created under the YCA, Congress has directed prison officials to establish facilities and programs that conform with the specific requirements of the YCA. These officials have no authority to revoke YCA sentences nor to foreclose to any segment of the YCA population the treatment and segregation the YCA mandates.

The Bureau of Prisons, in a strained reading of the Act, would read out of the Act the segregation requirement. The modifying phrase "insofar as practical" upon which the Bureau relies, however, does not bear upon the segregation requirement. The Seventh Circuit in this case, and the Third Circuit in *Thompson* v. *Carlson*, 624 F.2d 415 (3d Cir. 1980), rejected the Bureau's contention. *Outing v. Bell*, 632 F.2d 1144 (4th Cir. 1980), *cert. denied*, 101 S. Ct. 1710 (1981), which held to the contrary, was wrongly decided.

III. A. The Bureau of Prisons' interpretation of the YCA would render the Act unconstitutional. Courts have upheld the YCA against equal protection challenges because its unique rehabilitative opportunities serve as a *quid pro quo* for imposing a longer commitment on a YCA offender than would be permissible if that offender were sentenced as an ordinary adult. *E.g.*, *Carter* v. *United States*, 306 F.2d 283, 285 (D.C. Cir. 1962). Even if the YCA sentence does not exceed the maximum adult sentence for the offense, rehabilitative treatment may well be the *quid pro quo* for the length of the YCA sentence the judge imposes.

B. Moreover, the elimination of his entitlement to YCA-mandated treatment and segregation increased the severity of Robinson's sentence after he had begun to serve it, in violation of the guarantee against double jeopardy. The Act does not contain any provision authorizing the review or reevaluation of a YCA sentence after it is imposed, and Robinson had no reason to anticipate that the nature of his sentence could be dramatically altered after he had begun serving it. *See United States* v. *DiFrancesco*, 49 U.S.L.W. 4022 (Dec. 9, 1980) (No. 79-567).

C. Robinson's sentence entitled him to specific treatment. Even if Robinson could be deprived of his statutory right to YCA treatment, that deprivation could not take place without due process. *Micklus* v. *Carlson*, 632 F.2d 227 (3d Cir. 1980). In this case, the subsequent sentencing judges never considered whether Robinson could continue to derive benefit from YCA treatment for the remaining period of his YCA sentence. No administrative hearing was provided. Whatever process was required, Robinson did not receive it in this case.

IV. If the Court is prevented from rendering the decision in this case before the Court determines that the case has become moot, the writ of certiorari should be dismissed as improvidently granted. The decision of the court below should stand.

ARGUMENT

INTRODUCTION

This case is one in a long series of cases reflecting the Bureau of Prisons' unwillingness to implement the will of Congress as reflected in the YCA. *See, e.g., Watts* v. *Hadden,* 651 F.2d 1354 (10th Cir. 1981); *Micklus* v. *Carlson,* 632 F.2d 227 (3d Cir. 1980); *Brown* v. *Carlson,* 431 F. Supp. 755 (W.D. Wis. 1977). Although over thirty years have passed since the statute's enactment, the government's own brief in this case recounts the Bureau's failure to respond to the clear and specific commands set forth in the Act. Pet. Brief at 22-23 n.15, 25-26 n.16.

There is no statutory basis, nor is there any basis in the underlying policies of the Act, for the Bureau's denial of YCA treatment to YCA offenders such as Robinson. The Bureau's handling of YCA offenders committed to its custody renders meaningless the elaborate system devised by Congress. The considered determination entrusted to the sentencing judge becomes an empty formality when that determination can be ignored by the prison administrators.

As the court noted in *Brown* v. *Carlson,* the "provisions of the YCA would be inexplicable had not Congress intended the treatment of YCA offenders to differ from what it understood to be the prevailing treatment of non-YCA offenders, young and old." 431 F. Supp. at 766. The Bureau of Prisons must not be permitted to disregard the system Congress has directed it to establish for the rehabilitation of youthful offenders.

I.

THE YCA UNAMBIGUOUSLY VESTS IN THE SENTENCING JUDGE EXCLUSIVE AUTHORITY TO IMPOSE A YCA SENTENCE AND MANDATES SEGREGATION AND TREATMENT FOR OFFENDERS SENTENCED UNDER THE ACT.

A. Congress Enacted the YCA to Provide Alternative Sentencing Options and a Special, Rehabilitative System for Youthful Offenders.

The Federal Youth Corrections Act, enacted in 1950, is a comprehensive sentencing statute directed at offenders who are under the age of twenty-two when convicted. 18 U.S.C. §§ 5005 *et seq.* In 1958, Congress enacted additional legislation to permit a court, under certain circumstances, to extend its benefits to offenders convicted before their twenty-sixth birthday. 18 U.S.C. § 4216.

The YCA is largely the outgrowth of an extensive study and report to the Judicial Conference by a committee of federal circuit and district court judges appointed to address the problem of the treatment of youthful offenders. *See Report to the Judicial Conference of the Committee on Punishment for Crime* (1942) (hereinafter cited as *Judicial Conf. Rep.*). The report concluded, based on the experience of the English Borstal System in effect since 1894, that special factors operate on youthful offenders to produce habitual criminals. *Id.* at 33-39. The Committee found the then-existing system of sentencing in the United States to be inadequate for dealing with the special problems posed by youthful offenders. *Id.* at 33-35. Under the established system, all offenders over the age of eighteen were treated as adults and were sentenced according to the offense for which they were convicted. They then were committed to the custody of

the prison authorities, who were empowered to determine the conditions of their confinement. The alternative system that the committee proposed, and which Congress adopted in enacting the YCA, marks a significant and deliberate departure from this conventional process. *Id.* at 6-9.

The Committee recommended, and the YCA incorporated, new sentencing options for federal judges. Under the YCA, the sentencing judge (a) may place a youthful offender on probation; (b) may commit him to the custody of the Attorney General for treatment for an indeterminate term of six years; (c) may commit him to the custody of the Attorney General for treatment for a specified period not to exceed the maximum adult sentence for the crime; or (d) may sentence the youthful offender as an adult. *Id.* at 17-20; 18 U.S.C. §§ 5010, 5017. Congress believed that providing these new options would

> promote the rehabilitation of those who in the opinion of the sentencing judge show promise of becoming useful citizens, and so will avoid the degenerative and needless transformation of many of those persons into habitual criminals.

H.R. Rep. No. 2979, 81st Cong., 2d Sess. 1 (1950) (hereinafter H.R. Rep. No. 2979).

The two elements of the program Congress created under the YCA that are specifically mandated by 18 U.S.C. § 5011 for YCA sentences are: (1) treatment and (2) segregation, both from non-YCA, adult offenders and from other classes of committed YCA offenders as determined by their needs for treatment. 18 U.S.C. § 5011. *See Durst* v. *United States*, 434 U.S. 542, 545-47 (1978); *Dorszynski* v. *United States*, 418 U.S. 424, 432-37 (1974); *Watts* v. *Hadden*, 651 F.2d 1354, 1356-58 (10th Cir. 1981); *Micklus* v. *Carlson*, 632 F.2d 227, 237 (3d

Cir. 1980); *United States ex rel. Dancy* v. *Arnold*, 572 F.2d 107, 109 (3d Cir. 1978); *Harvin* v. *United States*, 445 F.2d 675, 679-81 (D.C. Cir.) (en banc), *cert. denied*, 404 U.S. 943 (1971); *Brown* v. *Carlson*, 431 F. Supp. 755, 765-67 (W.D. Wis. 1977).

The legislative history of the YCA reveals the concern Congress expressed for the treatment of YCA offenders:

> The underlying theory of the bill is to substitute for retributive punishment methods of training and treatment designed to correct and prevent antisocial tendencies. It departs from the mere punitive idea of dealing with criminals and looks primarily to the objective idea of rehabilitation.

H.R. Rep. No. 2979 at 3.

Similarly, segregation from non-YCA offenders was of crucial concern. Congress explicitly described the prevailing system, which it firmly rejected in enacting the YCA:

> By herding youth with maturity, the novice with the sophisticate, the impressionable with the hardened, and by subjecting youth offenders to the evil influences of older criminals and their teaching of criminal techniques, without the inhibitions that come from normal contacts and counteracting prophylaxis, many of our penal institutions actively spread the infection of crime and foster, rather than check, it.

H.R. Rep. No. 2979 at 2-3.

This Court has recognized the YCA as "the most comprehensive federal statute concerned with sentencing." *Dorszynski* v. *United States*, 418 U.S. 424, 432 (1974). The system it establishes represents "a departure from traditional sentencing, and [is] focused primarily on correction

and rehabilitation." *Id.* at 433. This Court has emphasized that the congressionally-mandated program of treatment and segregation is the keystone of the Act. *Durst* v. *United States,* 434 U.S. 542, 545-47 (1978).

In the many cases that have arisen involving the implementation of the YCA, the courts consistently have held that the treatment and segregation requirements of the Act are mandatory. *See, e.g., Watts* v. *Hadden,* 651 F.2d 1354 (10th Cir. 1981); *Micklus* v. *Carlson,* 632 F.2d 227 (3d Cir. 1980); *United States ex rel. Dancy* v. *Arnold,* 572 F.2d 107 (3d Cir. 1978); *Brown* v. *Carlson,* 431 F. Supp. 755 (W.D. Wis. 1977). Courts have decried the intransigence of the Bureau of Prisons in failing to comply with the thirty-year-old dictates of Congress as embodied in the YCA.[3]

The Act thus significantly departs from the prior system in that it expands the discretion of the trial judge, allowing him not only to determine the length of an offender's sentence but also to commit young offenders to a special rehabilitative program. Correspondingly, the Act removes from the prison administrators much of the discretion previously vested in them by dictating the conditions of confinement that must be provided for those designated by the sentencing courts as YCA offenders.

---

[3] *See, e.g., Watts* v. *Hadden,* 651 F.2d 1354, 1364 (10th Cir. 1981) ("It is now thirty years since the YCA was enacted. The record shows that not one institution is presently designated, set aside or adopted for YCA offenders. There is no alternative but to hold that this situation is completely out of harmony with the statute and the legislative history."); *Brown* v. *Carlson,* 431 F. Supp. 755, 765-66 (W.D. Wis. 1977) ("The harsh question for the court in the present cases is how to respond when it appears that an executive agency is failing to obey a legislative command.").

B. The YCA Explicitly Grants the Trial Court Exclusive Authority to Impose a YCA Sentence.

As this Court recently has reaffirmed, "in every case involving the interpretation of a statute, analysis must begin with the language employed by Congress." *Howe* v. *Smith*, 49 U.S.L.W. 4715, 4717 (June 17, 1981) (No. 80-5392) (citing *Rubin* v. *United States*, 49 U.S.L.W. 4103 (Jan. 21, 1981) (No. 79-1013), and *Reiter* v. *Sonotone Corp.*, 442 U.S. 330, 337 (1979)). When that analysis reveals no ambiguity, absent exceptional circumstances, "our inquiry comes to an end." 49 U.S.L.W. at 4718. The language employed by Congress in the YCA is unambiguous; moreover, the legislative history and the cases applying the statute mirror the unmistakable terms of the Act.

1. The Act Was Intended to Increase Judicial Sentencing Authority to Mandate Special Treatment and Segregation for Youthful Offenders.

In the YCA, Congress expressly vested in the trial judge the exclusive authority to choose whether to impose on a youthful offender a conventional sentence or a sentence pursuant to the YCA. 18 U.S.C. §§ 5010, 5023(a). Section 5010 sets forth the various options available to a judge sentencing a youthful offender. Each provision emphasizes the discretion of the sentencing court in choosing an appropriate sentence. 18 U.S.C. § 5010.

Under the YCA, the trial judge must evaluate each offender under the age of twenty-two to determine whether, in that judge's opinion, that youthful person might benefit from the special treatment and segregation that

accompany any sentence imposed under the Act.[4] Only the sentencing judge may make that determination:

> The proposed legislation is designed to make available for the *discretionary use of the Federal judges* a system for the sentencing and treatment of youth offenders that will promote the rehabilitation of those who *in the opinion of the sentencing judge* show promise of becoming useful citizens . . . .

H.R. Rep. No. 2979 at 1 (emphasis added).

The Act expands the traditionally broad range of discretion of the sentencing judge by allowing the judge to prescribe a distinct program of treatment. *Judicial Conf. Rep.* at 8-9. *See, e.g., Correctional System for Youth Offenders: Hearings on S. 1114 and S. 2609 before a Subcomm. of the Senate Comm. on the Judiciary*, 81st Cong., 1st Sess. 43-44 (1949) (hereinafter cited as *1949 Senate Hearings*); S. Rep. No. 1180, 81st Cong., 1st Sess. 10-11 (1949).

Indeed, this Court has ruled that the sentencing judge has unfettered authority to impose a YCA sentence and need not provide any explanation for his decision because no review of that decision by appellate courts was intended. *Dorszynski* v. *United States*, 418 U.S. 424 (1974). The decision of the Seventh Circuit in this case is strictly in accord with this Court's holding in *Dorszynski*. If a decision is not reviewable on appeal, *a fortiori* it may not be reviewed or modified by a subsequent trial court conducting separate and unrelated proceedings, nor by the Bureau of Prisons. *See* 642 F.2d at 1080-81, Pet. App. A, 8a-9a.

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[4] This Court held in *Dorszynski* v. *United States*, 418 U.S. 424, 425-26 (1974), that in order to sentence an offender under the age of twenty-two as an adult, the sentencing judge must first make a finding on the record that the offender will not benefit from YCA treatment. Although an offender between the ages of twenty-two and twenty-six also may receive a YCA sentence, an adult sentence may be imposed upon these older offenders without the "no benefit" finding. *See* 18 U.S.C. § 4216.

2. Congress Did Not Limit Application of the Act to Youths Who Commit Minor or Single Offenses.

Although the Bureau of Prisons never has provided Robinson with segregation and YCA treatment, the government maintains that he represents a "failure" of the YCA system. Pet. Brief at 20-21. The government repeatedly asserts that Robinson is not deserving of YCA treatment, that he has demonstrated himself to be an "adult" and that he is a "hardened criminal."[5] It is this precise determination which Congress has vested in the trial court exclusively. The premise of the Bureau's assertions must be that those who commit serious offenses, or more than one offense, are not to be treated as YCA offenders. The language of the Act, its legislative history, and its consistent application by the courts contradict this assumption.

The Act itself anticipates that some YCA prisoners will be serious or dangerous offenders. Therefore, the Act requires the Bureau of Prisons to make maximum security facilities available for YCA offenders. 18 U.S.C. § 5011.

The legislators contemplating the Act specifically discussed the benefits young people who had committed serious or repeated offenses might derive from YCA sentences.

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[5] The government repeatedly characterizes Robinson as a "hardened criminal," unfit for any but the most restrictive confinement, improperly relying on factual representations that are not in the record before this Court. Pet. Brief at 6-7 n.6, 13-14, 20-21, 30. That characterization is contradicted by the Bureau's own actions. While this case was before the court of appeals, the Bureau transferred Robinson from Marion, the penitentiary with the highest security rating, Pet. Brief at 30, to a medium security Federal Correctional Institution (FCI) at Memphis, *id.* at 9 n.10, and then to the special "administrative facility" at Butner, North Carolina, *id.* *See* Federal Prison System, United States Department of Justice, *Facilities 1980* at 27, 53, 59.

1949 Senate Hearings at 26-27, 30, 65-66, 76-78. The legislators were convinced that it was the youth and attendant malleability of such offenders that rendered them suitable subjects for rehabilitation:

> Lots of them will commit crimes without much thought and as a result of social pressures to which they are subject, which they would not commit in their more mature years at all.

Id. at 48.

In addition, the legislature, by providing for a commitment of six years, anticipated that rehabilitation might require a substantial amount of time in certain cases. *See id.* at 66. The Congressional goal of rehabilitating youth is devoid of meaning if it applies only to those who commit minor offenses or are model prisoners.

Sentencing judges have consistently exercised their discretion to sentence serious offenders to YCA treatment. *E.g., Murphy* v. *United States,* No. 80-1552 (D.C. Cir. May 18, 1981) (burglary and armed robbery); *United States* v. *Calder,* 641 F.2d 76 (2d Cir. 1981) (robbery, extortion and conspiracy); *Outing* v. *Bell,* 632 F.2d 1144 (4th Cir. 1980) (armed robbery), *cert. denied,* 101 S. Ct. 1710 (1981); *Thompson* v. *Carlson,* 624 F.2d 415 (3d Cir. 1980) (assault with intent to rape); *United States* v. *McDonald,* 611 F.2d 1291 (9th Cir. 1980) (conspiring to possess cocaine with intent to distribute); *United States ex rel. Dancy* v. *Arnold,* 572 F.2d 107 (3rd Cir. 1978) (first degree felony murder and carrying pistol without license). Robinson, in the case at bar, was sentenced under the YCA for second degree murder.

In *United States* v. *Dancy,* 510 F.2d 779 (D.C. Cir. 1975), a young offender was convicted of first degree felony murder, second degree murder, attempted armed robbery and

carrying a pistol without a license. The court of appeals held that the sentencing judge erred in concluding that he had "no alternative under the statute" but to sentence the offender as an adult rather than under the YCA after the presentence report he ordered under section 5010(e) recommended adult sentencing. *Id.* at 784-85. The court found:

> This apparent surrender of discretion and responsibility to the Youth Center authorities is fundamentally at odds with the demands of traditional sentencing doctrine . . . [and] is manifestly inconsistent with the provision of the FYCA which places the responsibility both for making a finding of "no benefit" and for making the sentencing decision attendant thereto on the trial court alone . . . .

Id. at 785. On remand, the trial judge sentenced Dancy to a 20-year term under the YCA. *United States ex rel. Dancy* v. *Arnold,* 572 F.2d 107, 108-09 (3d Cir. 1978).

The First Circuit has held that a court sentencing a repeat offender, previously sentenced as an adult, was not precluded from imposing a YCA sentence. *United States* v. *Fortes,* 619 F.2d 108 (1st Cir. 1980). Indeed, no other interpretation would be consistent with this Court's holding in *Dorszynski* v. *United States,* 418 U.S. at 425-26, requiring an explicit "no benefit" finding each time an offender under the age of twenty-two is sentenced to an adult sentence.

It is, at base, the initial determination of the sentencing judge to which the government takes exception.[6] The

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[6] The government asserts that "[a]n offender's commission of a felony while under a YCA sentence reflects . . . the sentencing judge's error in ordering YCA treatment for an offender who would not benefit from it . . . ." Pet. Brief at 20-21. If, however, the Bureau of Prisons had given Robinson the treatment and segregation to which the YCA sentence entitled him, Robiinson's subsequent behavior might well have been different.

Bureau apparently is of the opinion that only "good" prisoners are deserving of rehabilitative treatment. Many offenders who judges have determined may benefit from YCA treatment, however, do not conform to the Bureau's ideal image. The YCA was not designed to benefit only the "good" prisoner; rather, it reflects the belief of Congress that young criminals may be rehabilitated. The authority to designate offenders for YCA treatment is given exclusively to the sentencing judge. Robinson's individual case was examined and his entitlement to YCA status permanently resolved when he was sentenced by the trial court which imposed the YCA sentence.

3. The Language of the YCA Precludes the Termination of YCA Status Prior to the Completion of the YCA Sentence.

Once the trial judge has made his determination to take advantage of the provisions of the YCA in sentencing a youthful offender, the Act does not provide for any forfeiture of that status. The statute defines a "committed youth offender" as "one *committed* for treatment hereunder to the custody of the Attorney General pursuant to Sections 5010(b) and 5010(c) of this chapter." 18 U.S.C. § 5006(e) (emphasis added). The critical assignment of YCA status is made by the sentencing judge.

The statute further sets forth, in mandatory terms, the treatment that is to be accorded committed youth offenders. 18 U.S.C. § 5011. Section 5011 clearly provides that any offender serving a YCA sentence

> shall undergo treatment in institutions of maximum security, medium security, or minimum security types, including training schools, hospitals, farms, forestry and other camps, and other agencies that will provide the essential varieties of treatment. The

> Director shall from time to time designate, set aside, and adapt institutions and agencies under the control of the Department of Justice for treatment. Insofar as practical, such institutions and agencies shall be used only for treatment of committed youth offenders, and such youth offenders shall be segregated from other offenders, and classes of committed youth offenders shall be segregated according to their needs for treatment.

18 U.S.C. § 5011.

In this case, the sentencing judge made a well-considered determination to sentence Robinson under the YCA. Along with the sentence, the judge made specific recommendations indicating that he envisioned a continuing, intensive, rehabilitative process that he had concluded would benefit Robinson. 642 F.2d at 1078, Pet. App. A, 2a.[7] Robinson's YCA treatment was in no way conditioned upon his subsequent behavior. In accordance with Robinson's sentencing under the YCA, 18 U.S.C. § 5010(c), he was to be committed "to the custody of the Attorney General for treatment and supervision" pursuant to the Act for a maximum term of ten years, "until discharged by the Commission as provided in Section 5017(d) of this Chapter." 18 U.S.C. § 5010(c).

Section 5017(d) provides that a YCA offender must be released conditionally, under supervision, not later than two years before the expiration of his sentence. The date

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[7] At the time Robinson was sentenced, a youthful offender in the District of Columbia was to be sentenced under the Youth Corrections Act absent special circumstances. *United States* v. *Philips*, 479 F.2d 1200 (D.C. Cir. 1973). The sentencing judge nevertheless, as required by the statute, made a careful, individualized evaluation of Robinson before sentencing him under the Act, as is reflected in the recommendations he made regarding Robinson's treatment. *Robinson* v. *Ralston*, 642 F.2d at 1078, Pet. App. A, 2a.

of Robinson's mandatory conditional release from his YCA sentence under this provision is January 9, 1982. By the terms of the Act itself, until his term computed in accordance with section 5017(d) expires, the YCA requirements of segregation and rehabilitative treatment must apply to Robinson.[8]

Thus, under the plain language of the Act a committed youth offender remains subject to the terms of the Act for the duration of his sentence. There is nothing in any provision of the Act specifying or suggesting that any subsequent event can overturn, or trigger a reevaluation of, the sentencing judge's determination that the offender be confined pursuant to the YCA.[9] The statute is

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[8] The Bureau of Prisons acknowledges that Robinson's mandatory conditional release date under section 5017(d) is January 2, 1982, at which time he will begin serving his consecutive adult sentence. Pet. Brief at 11 n.12. Inconsistently, the Bureau is still computing Robinson's sentence according to the YCA despite the fact that he has been reclassified, and is being treated in all other respects, as an adult prisoner.

[9] Courts have held that a sentencing judge is not precluded from imposing a consecutive adult sentence on a prisoner who is serving a YCA sentence. *Nast* v. *United States*, 415 F.2d 338, 340 (10th Cir. 1969). *Accord, United States* v. *Lyons*, 609 F.2d 1338, 1340-41 (9th Cir. 1979), *cert. denied*, 100 S. Ct. 1059 (1980); *Mustain* v. *Pearson*, 592 F.2d 1018, 1021 (8th Cir. 1979); *In re Grand Jury Proceedings*, 532 F.2d 410, 411-12 (5th Cir.), *cert. denied*, 429 U.S. 924 (1976); *Roddy* v. *United States*, 509 F.2d 1145, 1146-47 (10th Cir. 1975). As the Seventh Circuit stated in this case, however, the subsequently imposed consecutive adult sentence cannot "render legally ineffective the [YCA] sentence." 642 F.2d at 1082, Pet. App. A, 12a-13a (quoting *Mustain* v. *Pearson*, 592 F.2d at 1021).

unambiguous: a YCA offender remains subject to the terms of the Act until his sentence has terminated as provided in the statute.

II.

THE BUREAU OF PRISONS LACKS THE AUTHORITY TO REWRITE THE YCA TO EXCLUDE OFFENDERS WHO HAVE INCURRED SUBSEQUENT CONSECUTIVE ADULT SENTENCES.

The government concedes that Congress did not provide for the forfeiture of YCA status by a committed youth offender. Pet. Brief at 20-21.[10] Nevertheless, the Bureau of Prisons seeks to interpret the Act so as to permit it to exclude from the terms of the YCA any offender, such as Robinson, who receives a consecutive adult sentence. Many of the individuals who are placed in the custody of the Bureau of Prisons present problems for prison administrators. In many cases, the problems increase in the course of their commitment. Nevertheless, Congress did not authorize the Bureau to deny YCA treatment to troublesome cases. Although the administration of the prison system is a difficult task, the Bureau of Prisons has not been given the authority to rewrite the law to accommodate its perceived problems and needs or to implement its theory of penology. Congress has mandated the treatment to be afforded offenders sentenced under the YCA; the Bureau of Prisons must follow the mandate of Congress.

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[10] This absence of any forfeiture provision is a sufficient basis for rejecting the government's position. Because the YCA is a penal statute, the rule of lenity applies and any ambiguity in statutory language or congressional intent must be strictly construed against the government. *Kayamakcioglu* v. *United States*, 418 F. Supp. 356, 357 (S.D.N.Y. 1976).

A. The Bureau of Prisons' Policy of Reclassifying YCA Offenders with Consecutive Adult Sentences Is in Conflict with the Statute.

The government emphasizes that the reclassification of YCA offenders who receive consecutive adult sentences as adults is based on an official Bureau of Prisons policy statement. Bureau of Prisons Program Statement 5215.2 (Dec. 12, 1978). That policy statement provides in part:

> For the purpose of this policy statement, a "YCA Inmate" is any inmate sentenced under 18 U.S.C. Section 5010(b), (c), or (e) who is not also sentenced to a concurrent or consecutive adult term, whether state or federal.

The Bureau of Prisons will not accord YCA treatment to prisoners who, like Robinson, do not come within the terms of this definition.

The language of the YCA is directly at odds with the position taken by the Bureau of Prisons. Nothing in the Act suggests that Congress intended to exclude from its terms any offender who is serving a YCA sentence. A "committed youth offender," defined as one sentenced pursuant to section 5010(b) or (c), must be segregated and accorded the treatment dictated by the provisions of the YCA. 18 U.S.C. §§ 5006(e), 5011.

In support of its policy, the government argues that the Bureau's interpretation of the YCA is entitled to deference. Pet. Brief at 19-20. To the contrary, an "interpretation" that has no basis in the language of the statute or its legislative history is not entitled to any authoritative weight.

> [T]he Bureau of Prisons does not have a blank check [in interpreting the YCA]. It is required to follow

> the directions that have been laid down by Congress and if there is to be a change in the law, Congress should make the change. Deference to administrative interpretations is inappropriate where the result is clearly inconsistent with congressional intent.

Watts v. *Hadden*, 651 F.2d 1354, 1365-66 (10th Cir. 1981) (citing *Espinoza* v. *Farah Manufacturing Co.*, 414 U.S. 86, 94-95 (1973), and *United States ex rel. Dancy* v. *Arnold*, 572 F.2d 107, 113 (3d Cir. 1978)).

Program Statement 5215.2 redefines and limits the scope of the Act, frustrating the intent of Congress as expressed in the statute. The discretion granted the Bureau to implement the Act does not confer on that agency the power to impose a blanket limitation on the statute's reach. As Judge Hall emphasized in his persuasive dissent in *Outing* v. *Bell*, 632 F.2d 1144 (4th Cir. 1980), *cert. denied*, 101 S. Ct. 1710 (1981):

> [I]n excluding those youth offenders who have a concurrent or consecutive adult term, the Bureau does more than merely interpret or clarify the existing congressional intent; it has usurped the legislative prerogative by modifying the scope of the Act.

Id. at 1148 (Hall, J., dissenting).

The government suggests that the Bureau derives its authority to rewrite the statute from two sources: (1) the finding of a subsequent sentencing judge that the offender will not benefit from an additional YCA sentence for a separate offense and (2) the administrative discretion granted to the Bureau under the Act. As the Seventh Circuit correctly ruled in this case, however, there is no proper basis for the Bureau's policy.

B. The Imposition of a Future Adult Sentence Does Not Provide a Basis for Revoking Current YCA Status.

1. The Second Judge's Determination Does Not Supersede the YCA Sentence Being Served.

The Bureau of Prisons contends, and the majority in *Thompson* v. *Carlson*, 624 F.2d 415 (3d Cir. 1980), held, that a consecutive adult sentence imposed by a subsequent judge automatically supersedes any YCA sentence the prisoner currently is serving. Pet. Brief at 39-40. As the Seventh Circuit in this case found, this erroneous view is based on a misconception about the scope of the discretion granted to both the original and the subsequent sentencing judges.

Decisions about sentencing under the YCA are to be made by a particular judge in a particular case at the time of sentencing. All available information about the offender is to be applied. The fact that a subsequent sentencing judge has the benefit of then-current information about the offender ensures that he can exercise wisely the discretion vested in him to pass sentence on the offender in connection with the offense then at issue. He is not empowered to make any kind of retroactive determination about a sentence previously imposed on the offender for a separate offense. The subsequent judge is given no authority to declare that the defendant must serve the balance of his previously-imposed YCA term as an adult. Nevertheless, the *Thompson* majority concluded, and the Bureau of Prisons contends here, that the determination of a second judge, required by *Dorszynski*, that a YCA prisoner will not benefit from YCA treatment during his second sentence, constitutes an implicit finding that continued service of the original YCA sentence is no longer beneficial.

This argument proceeds on the assumption that the second judge addressed the issue of whether the current YCA treatment should be interrupted, instead of the issue of whether the offender would benefit from further YCA treatment when his YCA sentence expired. In expressly rejecting the holding of the Third Circuit in *Thompson* v. *Carlson*, the Seventh Circuit concluded that the finding of the subsequent judge that Robinson should serve his consecutive term as an adult did not represent an explicit or implicit finding that Robinson could not continue to benefit from YCA treatment for the remainder of his YCA term. 642 F.2d at 1079, Pet. App. A, 6a. Furthermore, the court stated that "the YCA does not permit such a reevaluation, even if it were explicitly made." *Id.* The court held that "the YCA mandates that [Robinson] be treated as a YCA prisoner so long as he is serving his YCA sentence . . . ." *Id.*[11]

As the court below noted, nothing in the record in this case suggests that the subsequent sentencing judges even considered the possibility that their imposition of consecutive sentences might operate to revoke Robinson's entitlement to YCA treatment.[12] *Id.* The precise issue before them was whether Robinson would derive benefit from additional YCA treatment upon completion of his current YCA sentence. In the case of the first consecutive adult sentence, the judge made only the finding required by law that Robinson would gain "no benefit" from an additional YCA

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[11] Not only was the Seventh Circuit panel unanimous in its holding in this case, but no judge of the circuit thought the panel's decision not to follow the Third Circuit's holding warranted an *en banc* hearing. 642 F.2d at 1079 n.5, Pet. App. A, 6a n.5.

[12] Indeed, as the court of appeals noted, the subsequent judges may well have sentenced Robinson as an adult to consecutive terms precisely because they contemplated his prior completion of his current YCA term. 642 F.2d at 1082, Pet. App. A, 12a.

sentence; in the case of the second sentence, the judge failed to make even that statutorily-required finding.[13]

The broad authority granted by Congress to the sentencing judge under the YCA would be eviscerated if a judge in an entirely unrelated proceeding could override his decision. The Seventh Circuit properly declined to infer that Congress intended such "a departure from well-established [sentencing] doctrine without a clear expression to disavow it." 642 F.2d at 1080, Pet. App. A, 9a (quoting *Dorszynski* v. *United States,* 418 U.S. at 441).

2. The Limited Administrative Discretion Granted the Bureau of Prisons Under the YCA Does Not Provide a Basis for Revoking YCA Status.

The government asserts that Congress has granted the Bureau of Prisons great latitude in implementing the YCA. The Act, however, is to the contrary. In it, Congress established a new, special category of prisoners: committed youth offenders. 18 U.S.C. § 5006(e). In so doing, Congress reduced the latitude previously granted prison authorities to categorize and to treat, as they deemed appropriate, all offenders committed to their custody. Congress granted to the trial court the exclusive discretion to invoke the terms of the YCA, which places specific, statutorily-mandated limitations on the choices that the prison authorities may make regarding the terms of a prisoner's confinement.

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[13] Although this issue is not before the Court, the imposition of the second adult sentence without a "no benefit" finding was illegal under the holding in *Dorszynski* v. *United States,* 418 U.S. 424, 425-26 (1973). The government has so conceded. Pet. Brief at 7 n.7.

The scope of discretion granted prison authorities under the Act is sharply limited. The YCA requires the Director of the Bureau of Prisons to establish classification facilities for evaluating and making recommendations for the treatment of committed youth offenders. 18 U.S.C. § 5014. The Director, upon receipt of those recommendations, must either release the offender conditionally, under supervision, or order his commitment to a facility that provides YCA treatment in accordance with the terms of the Act. *Id.* § 5015(a). The statute allows the Director to transfer a committed youth offender from one such facility to another. *Id.* § 5015(b). Finally, the Act directs that periodic reexaminations of the offender shall be made. *Id.* § 5016.

Nowhere in its recitation of the responsibilities of the Director or of the Bureau of Prisons does the statute indicate that any reevaluation may be made of the threshold determination that an offender should be committed pursuant to the YCA; nor is there any mechanism for terminating the committed youth offender's status as a YCA offender.

The Bureau of Prisons maintains that the "insofar as practical" language of section 5011[14] frees the Bureau to ignore the segregation requirement whenever the Bureau concludes that such segregation is administratively incon-

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[14] The language relied upon by the government states:

> The Director [of the Bureau of Prisons] shall from time to time designate, set aside, and adapt institutions and agencies under the control of the Department of Justice for treatment. Insofar as practical, such institutions and agencies shall be used only for the treatment of committed youth offenders, and such youth offenders shall be segregated from other offenders, and classes of committed youth offenders shall be segregated according to their needs for treatment.

18 U.S.C. § 5011.

venient or in conflict with the Bureau's penological philosophy.[15] The Bureau of Prison's interpretation of that provision is incorrect.

The legislative history makes it clear that Congress intended to impose an absolute, unqualified segregation requirement while granting the Bureau discretion in the classification of inmates and the choice of institutions.

> The Director is required to designate, set aside and adapt institutions and agencies under the control of the Department of Justice for treatment. Such institutions and agencies are to be used only for the treatment of youth offenders, so far as practicable; and youth offenders are to be segregated from other offenders, and the classes of offenders are to be segregated according to their needs for treatment.

H.R. Rep. No. 2979 at 3-4.

The court of appeals in this case and the Third Circuit in *Thompson* v. *Carlson* were in accord in rejecting the Bureau's reading of section 5011. Both courts correctly concluded that the qualification "insofar as practical" relates only to the requirement that the facilities set aside for treatment of YCA inmates be used exclusively for such

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[15] The government's representations regarding the practical problems implementation of the Act poses are unsubstantiated and have never been subjected to challenge or review in the lower courts. *E.g.*, Pet. Brief at 25-32 & nn.16-18. Thus, the government should be precluded from relying on those representations here. Should the Court determine that the factual issues the government attempts to raise for the first time before this Court are relevant, decision on this undeveloped record would be inappropriate, and the Court should dismiss the writ of certiorari in this case as improvidently granted. *See, e.g., Johnson* v. *Massachusetts*, 390 U.S. 511 (1968); *Wainwright* v. *City of New Orleans*, 392 U.S. 598 (1967); *Smith* v. *Mississippi*, 373 U.S. 238 (1963); *Atchley* v. *California*, 366 U.S. 207 (1961); *Rice* v. *Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70, 78 n.2 (1954).

purposes; the phrase does not modify the balance of the sentence, which explicitly directs that YCA offenders be segregated from adult offenders and be further segregated in classes according to their particular needs. As the *Thompson* court and the court below observed, to construe this language as empowering the Bureau to reclassify an inmate serving a YCA sentence as an adult would be in direct conflict with the statute:

> If we were to so construe the statute, we would expand considerably the power given to the Bureau of Prisons by vesting in it that which Congress has given exclusively to the judiciary, *i.e.*, the determination whether the offender can benefit under the YCA. We find no statutory basis or policy reason for such a construction. Despite the control given the Bureau of Prisons over many aspects of the commitment of the youth offender, Congress has not given it either the power to invoke or the power to revoke the application of the statute to a committed youth offender. Even in the case of prisoners who have manifested serious adjustment difficulties after commitment, the Bureau of Prisons is limited to designation of an appropriate institution or, as we noted in [*United States ex rel Dancy* v. *Arnold*, 572 F.2d 107 (3d Cir. 1978)], segregation of committed youth offenders according to their needs for treatment. 572 F.2d at 113 n.10.

Thompson v. *Carlson*, 624 F.2d 415, 421 (3d Cir. 1980), *quoted in Robinson* v. *Ralston*, 642 F.2d at 1082, Pet. App. A, 13a-14a.

Only one court has held to the contrary on facts paralleling those presented in this case. *Outing* v. *Bell*, 632 F.2d 1144 (4th Cir. 1980), *cert. denied*, 101 S. Ct. 1710 (1981). The *Outing* majority, like the government here, relies on the argument that segregating offenders such as Robinson would lead to the mixing of YCA prisoners of differing levels of "criminal sophistication." Pet. Brief

at 24-27.[16] The *Outing* majority, however, failed to examine the specific language of the Act which directs the Bureau to evaluate the particular needs of YCA offenders, to classify them and, as appropriate, to segregate them from each other. This provision represents the solution Congress specifically devised for this problem and is a complete answer to the government's argument.[17] *See* 18 U.S.C. §§ 5011, 5013-5017.

The reasons cited by the government for excluding committed youth offenders with consecutive adult sentences from YCA treatment reveal that the real basis for the policy is the Bureau's fundamental disagreement with the penological philosophy on which the YCA is based.[18] The

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[16] As the persuasive dissent in *Outing* emphasized, the majority's "refusal to recognize that mandatory segregation of a YCA inmate is required by the statute is clearly contrary to the overwhelming weight of authority." 632 F.2d at 1148 (Hall, J., dissenting).

[17] Asserting that "this contrived and artificial categorization of offenders bears no relation to the policies underlying the YCA or any other rational penal system," Pet. Brief at 11-12, the government ignores the fact that the language of the Act itself explicitly provides for such categorization. Whatever the Bureau of Prisons' conception of what constitutes a "rational penal system," the statute enacted by Congress clearly mandates the segregation of committed youth offenders such as Robinson from non-YCA prisoners and, if necessary, from other classes of YCA prisoners.

[18] The YCA reflects Congress' view that special treatment of young offenders will strengthen them to resist pressures that might otherwise lead them to further criminal activities. The Bureau objects to treating Robinson as a YCA prisoner when, at the end of his YCA term, he will not reenter society but will commence an adult sentence. Pet. Brief at 33-37. But the strengthening effect of YCA treatment would be of at least equal benefit to a youth preparing to embark on an adult prison sentence as to a youth preparing for reintegration into normal society, where the corrupting influences that concerned Congress might be less prevalent. *See, e.g., Thompson* v. *Carlson*, 624 F.2d 415, 428 (3d Cir. 1980) (Adams, J., dissenting), *quoted in Ralston* v. *Robinson*, 642 F.2d at 1082, Pet. App. A, 11a-12a.

III.

MODIFICATION OF A YCA SENTENCE CURRENTLY IN FORCE VIOLATES CONSTITUTIONAL GUARANTEES.

The change in status from a YCA to an adult offender deprives a prisoner of the special treatment to which the statute entitles him and increases the severity of the sentence. Therefore, the government's interpretation of the Act renders the statute unconstitutional. This Court should not construe the Act to violate the Constitution if any other construction is possible. *N.L.R.B.* v. *The Catholic Bishops of Chicago*, 440 U.S. 490, 500 (1979) (citing *Murray* v. *The Charming Betsy*, 2 Cranch 64, 118 (1804) (Marshall, C.J.)).

A. Changing Robinson's YCA Sentence to an Adult Sentence Violates the Equal Protection Guarantee.

The minimum six-year sentence provided by the YCA is in excess of the maximum adult sentence that can be imposed in some cases. Various courts of appeals have rejected the claim that the YCA violates the equal protection guarantee by permitting youths to be sentenced for a longer period than adults for the same violation. These courts have upheld the constitutionality of the YCA on the premise that "the basic theory of the Act is rehabilitation and in a sense this rehabilitation may be regarded as comprising the *quid pro quo* for a longer confinement but under different conditions and terms than a defendant would undergo in an ordinary prison." *Carter* v. *United States*, 306 F.2d 283, 285 (D.C. Cir. 1962) (Burger, J.). *Accord, Caldwell* v. *United States*, 435 F.2d 1079, 1081 (10th Cir. 1970); *Brisco* v. *United States*, 368 F.2d 214, 215 (3d Cir. 1966); *Rodgers* v. *United States*, 326 F.2d 56 (10th Cir. 1963); *Cunningham* v. *United States*, 256 F.2d 467, 472 (5th Cir. 1958).

Bureau of Prisons may not disregard the Act, which provides simply and emphatically that committed youth offenders must receive treatment and segregation; the individual needs of the particular YCA offender are to dictate his treatment.[10] It is the language of the Act that must guide the Bureau. *E.g., Watts* v. *Hadden*, 651 F.2d 1354, 1366 (10th Cir. 1981); *Johnson* v. *Bell*, 487 F. Supp. 977, 982, 987-88 (E.D. Mich. 1980).

If the Bureau wishes to see the Act rewritten to permit the result it urges in this case, it may not undertake the rewriting itself nor should it ask this Court to do so; instead, it should address its arguments directly to Congress.

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[10] The Bureau suggests that a prisoner's proximity to family members is more important than, and incompatible with, YCA treatment and segregation. Pet. Brief at 25-26 n.16, 29-30. The Bureau's avowed concern for keeping prisoners close to their families is thoroughly belied by the repeated transfers to which it has subjected Robinson. *Id.* at 6-9 & n.10. In the seven years since his YCA conviction, Robinson has been confined in at least seven different institutions at the following locations: Ashland, Kentucky; Oxford, Wisconsin; Lompoc, California; Terre Haute, Indiana; Marion, Illinois; Memphis, Tennessee; and Butner, North Carolina. *Id.* The Bureau obviously has displayed little concern for preserving Robinson's ties with his family in Washington, D.C. The practice of shipping prisoners from one facility to another within the system apparently is common. *See, e.g., Micklus* v. *Carlson*, 632 F.2d 227, 230-31 (3d Cir. 1980) (offender sentenced under YCA incarcerated at six different institutions, none of which provided YCA treatment, in a 3½-year period).

In applying its policy, the Bureau converts YCA sentences, imposed by judges who had the rehabilitative programs and goals of the YCA in mind when imposing them, into adult sentences that lack the special elements of the YCA sentence. That change effectively eliminates this constitutionally-required *quid pro quo*. Even if, as in Robinson's case, the YCA sentence did not exceed the maximum sentence that could have been imposed for the offense, the rehabilitative opportunities of the YCA sentence may well have been a crucial factor in the sentencing judge's decision regarding the length of the sentence. The drastic alteration in converting a YCA sentence into an adult sentence raises grave equal protection questions. *See Watts* v. *Hadden*, 652 F.2d 1354, 1365 (10th Cir. 1981); *United States ex rel. Dancy* v. *Arnold*, 572 F.2d 107, 111 (3d Cir. 1978); *United States ex rel. Sero* v. *Preiser*, 506 F.2d 1115, 1130-31 (2d Cir. 1974), *cert. denied*, 421 U.S. 921 (1975). *See also United States ex rel. Wilson* v. *Coughlin*, 472 F.2d 100, 103 n.6 (7th Cir. 1973).

B. The Change in Robinson's Sentence Arising from a Second, Unrelated Proceeding Violates the Prohibition Against Double Jeopardy.

The denial of the segregation and treatment mandated by Robinson's YCA sentence constitutes an increase in the severity of his sentence after he has begun to serve it, violating the guarantee against double jeopardy set forth in the Fifth Amendment to the United States Constitution.[20] The

[20] A change in the terms of the sentence, as well as in its length, constitutes a more severe sentence. *See United States* v. *McDonald*, 611 F.2d 1291, 1294-95 (9th Cir. 1980); *United States* v. *Hawthorne*, 532 F.2d 318, 323-24 (3d Cir.), *cert. denied*, 429 U.S. 894 (1976).

plain language of the Act did not apprise Robinson that any review or revision of his YCA sentence was possible.

In *United States* v. *DiFrancesco*, 49 U.S.L.W. 4022 (Dec. 9, 1980) (No. 79-567), the Court upheld, against a due process challenge, a statutory provision that authorized the government in some instances to appeal a criminal sentence imposed by the district court. The Court charged the defendant with knowledge of the statute and its appeal provisions. Because the provision expressly authorized appeal, the defendant had "no expectation of finality in his sentence until the appeal is concluded or the time to appeal has expired." 49 U.S.L.W. at 4028.[21]

The *DiFrancesco* Court left open the precise issue raised here. The YCA does not contain a provision authorizing sentence review as did the statute at issue in *DiFrancesco*. Indeed, this Court has held that no review of a YCA sentence is permissible, *Dorszynski* v. *United States*, 418 U.S. at 425-26; nor is there statutory authority for revision of a YCA sentence either by a judge in an unrelated proceeding or by the Bureau of Prisons. The Fifth Amendment protection against double jeopardy would be violated by reading into the Act the authority to revise Robinson's sentence.

C. The Change in Robinson's Sentence Violates the Due Process Guarantee.

The Bureau of Prisons' interpretation of the YCA is also defective because it violates the due process guarantee

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[21] The Court suggested, however, that alteration of a sentence, even when the statute contemplates revision, might not be permitted once an offender has begun serving his sentence. *Id.* at 4027-28.

under the Fifth Amendment. Robinson has a statutorily-created right under section 5011 of the YCA to receive the special treatment and segregation Congress has mandated. That entitlement to YCA treatment creates an interest protected by the due process clause. *Micklus* v. *Carlson*, 632 F.2d 227, 238 (3d Cir. 1980). Even if it were constitutionally permissible to deprive Robinson of that statutory right, such a revocation would have to be made in accordance with the requirements of due process. *See Meachum* v. *Fano*, 427 U.S. 215, 225-27 (1976); *Montayne* v. *Haymes*, 427 U.S. 236, 242 (1976). The courts imposing the consecutive adult sentences here did not meet these due process requirements. As the Seventh Circuit stated, these courts apparently never even considered, much less decided, whether Robinson could continue to derive benefit from the Act for the remaining period of his YCA sentence. 642 F.2d at 179, 182, Pet. App. A, 6a, 12a. No hearing or formal procedure was provided by the prison authorities before Robinson lost his YCA status. Whatever process was due, Robinson did not receive it.

IV.

SHOULD THE COURT DETERMINE THAT THIS CASE HAS BECOME MOOT, THE WRIT OF CERTIORARI SHOULD BE DISMISSED AS IMPROVIDENTLY GRANTED.

The government contends that this case will become moot on January 9, 1982, when Robinson completes his YCA term. If this Court accepts the government's argument, and if this Court is prevented from issuing its decision before that date, the writ of certiorari granted in this

case should be dismissed. The government argues that, if this case becomes moot, this Court should vacate the judgment of the court of appeals with directions to the district court to dismiss the case. Pet. Brief at 11 n.12. Although the Court sometimes has relied upon the case cited by the government, *United States* v. *Munsingwear*, 340 U.S. 36 (1950), in vacating a judgment of a court of appeals when a case has become moot, vacation would be wholly inappropriate in this case.

Robinson opposed the granting of the writ of certiorari in part on the ground that his YCA term soon would expire. Should the Court be prevented from rendering a decision before January 9, 1982, it would be inappropriate then to dismiss the appeal and vacate the decisions of the lower courts. Such an order would have the effect of eliminating the conflict that now exists among the courts of appeals, leaving a misleading appearance of uniformity as to an issue that is in fact the subject of considerable controversy. Neither *Munsingwear* nor any other decision of this Court requires such a result.

If the Court determines this case has become moot, the writ of certiorari should be dismissed as improvidently granted.

CONCLUSION

For the reasons set forth above, the judgment of the United States Court of Appeals for the Seventh Circuit should be affirmed.

If the Court should conclude that this case has become moot before the Court has issued its decision, the writ of certiorari should be dismissed as improvidently granted.

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No. 80-2049

In the Supreme Court of the United States

OCTOBER TERM, 1980

GEORGE A. RALSTON, WARDEN, PETITIONER

v.

JOHN CARROLL ROBINSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY BRIEF FOR THE PETITIONER

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REPLY BRIEF FOR THE PETITIONER

For the most part, respondent appears not to take issue with the central arguments of our opening brief. Respondent identifies nothing in the legislative history or underlying policies of the Youth Corrections Act suggesting that Congress intended to require the Bureau of Prisons to confine an offender who has received an adult sentence with ordinary YCA offenders. He simply claims, in passing, that the YCA "clearly mandates" that he be segregated both from "non-YCA prisoners and, if necessary, from other classes of YCA prisoners" (Resp. Br. 30 n.17). We explain in our opening brief (Pet. Br.

14-15, 28-32) why this approach—segregating YCA offenders with subsequent adult sentences from all other classes of offenders—produces results that Congress could not have intended, that do not aid respondent, and that cannot possibly be required by the Act.[1] Similarly, except for an unsubstantiated speculation in a footnote,[2] respondent does not argue that Congress intended YCA treatment as preparation for an adult term of incarceration, or that Congress ever envisioned that the custodial phase of YCA treatment

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[1] In our opening brief we stated (Pet. Br. 14, 30) that at the time the district court granted him relief, respondent was one of only two inmates serving YCA sentences who were confined at the United States Penitentiary at Marion, Illinois, the most secure institution in the federal penal system. We argued in this connection that unless respondent were to be moved to a less secure institution, segregating him from both ordinary adult offenders and ordinary YCA offenders would have had the effect of placing him in nearly or strictly solitary confinement.

In fact, there were three, not two, offenders serving YCA sentences at Marion on the date of the district court's order. The statement in our opening brief was based apparently on erroneous information in the Bureau of Prisons' central computer records in Washington. The Bureau discovered the error when it sought to confirm the information with officials at Marion. We discovered this error several days before respondent's brief was due to be filed and advised respondent's counsel of it immediately. We regret the discrepancy, but we note that it is wholly immaterial to our argument.

[2] Respondent suggests (Resp. Br. 30 n.18) that YCA treatment might have a "strengthening effect" that will aid him during his adult incarceration. Essentially the same suggestion was made by the court of appeals and is answered in our opening brief (Pet. Br. 15, 33-37). Respondent offers no answers to our arguments; nor does he cite anything from the legislative history of the Act to support his assertion or show how it is consistent with the Act's underlying principles.

would culminate not in a gradual reintegration into society but in an adult prison term.

Thus respondent implicitly concedes that the history and purposes of the YCA refute his claim, and he essentially relies on the assertion that the plain language of the YCA compels the court of appeals' conclusion (Resp. Br. 13, 18-21); he echoes the court of appeals' argument that his sentence has been impermissibly "modified" or "reevaluat[ed]" (Resp. Br. 14, 20); and he attributes to the Bureau of Prisons a number of positions, which he then attacks, on issues that are not before the Court.

1. Respondent does not question our showing (Pet. Br. 18-21) that when Congress enacted the YCA it did not contemplate or specifically concern itself with the problem presented by an offender who receives a subsequent adult sentence while serving a YCA sentence. Nonetheless, respondent asserts that because he was " '*committed* * * * to the custody of the Attorney General pursuant to' " the YCA (Resp. Br. 18, quoting 18 U.S.C. 5006(e); emphasis by respondent), he is a "committed youth offender" within the meaning of the Act, and that the language of the Act entitles every committed youth offender to treatment and segregation under 18 U.S.C. 5011 for the entire length of his sentence (Resp. Br. 18-20).

Our principal answer is that because there is no indication that Congress or the drafters of the YCA had in mind the question presented by dual-status offenders when they wrote the language respondent invokes, the Court should not interpret that language in isolation from the Act's underlying purposes. "When 'interpreting a statute, the court will not look merely to a particular clause * * * but will

take in connection with it the whole statute * * * and the objects and policy of the law * * * and give to it such a construction as will carry into execution the will of the Legislature * * *.'" *Kokoszka* v. *Belford*, 417 U.S. 642, 650 (1974), quoting *Brown* v. *Duchesne*, 60 U.S. (19 How.) 183, 194 (1857). The Court has said that "in all cases of statutory construction, our task is to interpret the words of the[] statute[] in light of the purposes Congress sought to serve" (*Chapman* v. *Houston Welfare Rights Organization*, 441 U.S. 600, 608 (1979)), and that it is "fundamental that a section of a statute should not be read in isolation from the context of the whole Act, and that in fulfilling our responsibility in interpreting legislation, 'we must not be guided by a single sentence or member of a sentence, but [should] look to the provisions of the whole law, and to its object and policy'" (*Richards* v. *United States*, 369 U.S. 1, 11 (1962); footnotes omitted). The Court "cannot, in the absence of an unmistakable directive, construe the Act in a manner which runs counter to the broad goals which Congress intended it to effectuate." *FTC* v. *Fred Meyer, Inc.*, 390 U.S. 341, 349 (1968). See also *Watt* v. *Alaska*, No. 79-1890 (Apr. 21, 1981), slip op. 6-7.

In our opening brief, we show that attempting to afford respondent segregation and treatment as if he were an ordinary YCA offender would be inconsistent with the purposes of the Act and would produce results that Congress could not have intended. But even if the Court were to consider the language of the YCA in isolation, as respondent urges, that language does not compel the result respondent seeks. Respondent's textual argument leads

equally well to the conclusion that an offender who receives a *concurrent* adult sentence while serving a YCA term remains a "committed youth offender" entitled to treatment and segregation under 18 U.S.C. 5011. It is wholly implausible to suppose that such an offender must be treated as a YCA offender and not an adult,[3] but this implausible result can be avoided only by looking beyond the text of the YCA.[4]

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[3] Among other things, such an interpretation of the Act would effectively deny judges the power to impose concurrent adult sentences on offenders serving YCA terms, despite the Congress's clear intention—which both respondent and the court of appeals emphasize (*e.g.*, Resp. Br. 14)—that the YCA not restrict a sentencing judge's discretion. See *Dorszynski* v. *United States*, 418 U.S. 424, 436-442 (1974).

[4] Nor can respondent argue that it is sufficient to "read together" the text of the YCA and the text of the statutes governing adult sentences. First, any effort to read the YCA together with another statute involves acknowledging that the text of the YCA does not solve the problem and that the statutes' underlying purposes must be considered; respondent all but concedes that such an acknowledgement would be fatal to his claim. In any event, read literally, the statutes governing adult sentencing appear to make respondent a "committed" adult offender under 18 U.S.C. 4082, the statute giving the Attorney General broad discretion over the conditions of confinement of adult offenders. At the point respondent was sentenced as an adult, the court entered a judgment ordering that respondent be "committed to the custody of the Attorney General" (Form 25, Fed. R. Crim. P.). That respondent has not yet begun to serve his adult sentence does not mean he has not been committed to the custody of the Attorney General pursuant to that sentence; under 18 U.S.C. 3568, a sentence "shall commence to run from the date on which [the offender] is received at the penitentiary * * * for service of such sentence," making it clear that the date of commitment to the custody of the Attorney General is dis-

We do not contend that the language of the Act, in isolation, favors our position—simply that it is inadequate to resolve the issue in this case. In our view, the conclusion is inescapable that the language of the Act was not drafted with an eye to the problem of the dual-status offender who has had both a YCA and an adult sentence imposed on him, and to solve that problem the Court must look beyond the text to the Act's purposes.

2. Respondent asserts (Resp. Br. 20, 26) that we rely on the supposed power of the Bureau of Prisons, or of the judges who imposed his adult sentences, to "overturn," "reevaluat[e]," or "override" respondent's YCA sentence. Respondent argues that the exercise of this power violates both the YCA (Resp. Br. 24-27) and the Double Jeopardy Clause (Resp. Br. 33-34).

As we explained in our opening brief (Pet. Br. 37-38), assertions that this case involves a revocation or modification of a sentence misconceive the issue. It is true that when respondent received an adult sentence, the Bureau of Prisons altered the conditions of his custody; but altering the conditions of a prisoner's custody does not constitute "review[ing]" or "modif[ying]" (Resp. Br. 14) his sentence. The Bureau routinely alters the conditions of prisoners' custody, for example when it moves them from one facility to another (see 18 U.S.C. 4081, 4082); it is clear that such actions do not constitute an impermis-

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tinct from the date on which an offender begins to serve his sentence. Moreover, *Peyton* v. *Rowe*, 391 U.S. 54 (1968), indicates that respondent is apparently "in custody under [the adult] sentence" for purposes of attacking it collaterally under 28 U.S.C. 2255, even though he has not yet begun to serve that sentence.

sible modification of a sentence, so long as "the conditions or degree of confinement to which [a] prisoner is subjected [by the Bureau of Prisons] is within the sentence imposed upon him." See *Montanye* v. *Haymes*, 427 U.S. 236, 242 (1976); *Moody* v. *Daggett*, 429 U.S. 78, 88 n.9 (1976). See also *United States* v. *DiFrancesco*, 449 U.S. 117, 137 (1980); *id.* at 148 (Brennan, J., dissenting) (decisions to revoke parole or probation do not constitute an impermissible revision or modification of a sentence because they are within the contemplation of the sentence already imposed.)

Thus the question in this case concerns the nature of the limitations imposed by respondent's YCA sentence; in particular, the question is whether Congress intended a YCA sentence to confer on an offender sentenced as an adult the right to be confined with ordinary YCA offenders or the right to a form of treatment plainly not designed for those awaiting adult incarceration. If, as we argue, it is inherent in a YCA sentence that the requirements of YCA treatment and segregation do not survive a subsequent adult sentence, then respondent was subject to no increase or change in his original sentence. This is the issue we address in our opening brief; discussion of reviewing, revoking, or overturning a sentence only beclouds the issue.[5]

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[5] Respondent also suggests that there is a double jeopardy problem in this case because the conditions of his custody were modified after he began to serve his sentence. But even the dissenters in *United States* v. *DiFrancesco*, *supra*, —who took the position that increasing a sentence on appeal violates the Double Jeopardy Clause—said that parole or probation revocation is permissible precisely *because* it is "predicated on a defendant's activity since imposition of the

3. Respondent repeatedly attributes to us positions that our principal brief does not adopt on issues that are not before the Court. For example, respondent asserts that our position "must be" that offenders guilty of "serious offenses, or more than one offense, are not to be treated as YCA offenders" (Resp. Br. 15); that the Bureau of Prisons believes the term "[i]nsofar as practical" in 18 U.S.C. 5011 "frees [it] to ignore the segregation requirement whenever [it] concludes that such segregation is administratively inconvenient or in conflict with [its] penological philosophy" (Resp. Br. 27-28); that we are "of the opinion that only 'good' prisoners are deserving of rehabilitative treatment" (Resp. Br. 17-18); that the Bureau applies the YCA "only to those who commit minor offenses or are model prisoners" (Resp. Br. 16); and that the Bureau wishes "to deny YCA treatment to troublesome cases" (Resp. Br. 21).[6] The central fact of this case, however, is not that respondent has committed three serious offenses or that he is a major disciplinary problem—although these things are true—but that respondent has received an adult prison sentence. The YCA does not give adult offenders a right to be confined with ordinary YCA offenders, and Congress did not intend YCA treatment as preparation for a period of adult confinement. Respondent's answers to the various argu-

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original sentence" (449 U.S. at 148 (Brennan, J., dissenting)). A change in the conditions of custody is even less of a "modification" of a sentence than parole revocation.

[6] In this case, we have not chosen to assert that the Bureau has these powers, but it is worth recalling that correctional authorities in the English Borstal system—after which the YCA was indisputably modeled—had such powers. See Pet. Br. 24.

ments he attributes to us do not even address these fundamental policies of the YCA.

The extraneous issues that respondent attempts to raise have been the subject of litigation in other cases in the lower courts; we so advised this Court in our opening brief (see Pet. Br. 22-23 n.15, 25-26 n.16, 28 n.17). While we of course do not take the extreme views on these issues attributed to us by respondent, we do believe, as we advised the Court, that some lower court decisions have gone too far in denying the Bureau the flexibility it needs to structure effective treatment programs and to protect inmates and the public (Pet. Br. 25-26 n.16, 28 n.17). These decisions are part of the background of this case; to the extent that the Bureau's flexibility in dealing with YCA offenders has been excessively limited by the lower courts, it is even more important that offenders like respondent—for whom the YCA is so clearly not intended, and who are so clearly ill-suited to YCA treatment—not be included in the class of YCA offenders. But the reason respondent should be excluded from that class is that he has been sentenced to adult prison terms and therefore is, from the standpoint of the YCA's policies, an adult offender.

Respondent also repeatedly cites (*e.g.*, Resp. Br. 8, 12 & n.3), *Brown* v. *Carlson*, 431 F. Supp. 755 (W.D. Wis. 1977), and *Watts* v. *Hadden*, 651 F.2d 1354 (10th Cir. 1981), in an apparent effort to attack the Bureau's good faith. As we explained in our opening brief (Pet. Br. 22-23 n.15, 25-26 n.16), these cases disapproved aspects of the Bureau of Prison's interpretation of the segregation requirement found in 18 U.S.C. 5011.[7] The issue addressed

[7] Other cases have upheld the Bureau's policies. See, *e.g.*, *Outing* v. *Bell*, 632 F.2d 1144, 1145-1146 (4th Cir. 1980).

in *Brown* and *Watts* is not involved in the present case; here, our argument is that the purposes underlying Congress's preference for segregation demonstrate that that preference, whatever its precise contours as applied to ordinary YCA offenders, does not entitle an offender like respondent to be confined with YCA offenders—indeed, it suggests that he be kept away from ordinary YCA offenders—or otherwise to be segregated from adult offenders. In other words, what is at issue here is not the Bureau's interpretation of the segregation requirement, but whether respondent can invoke that requirement at all.

After the decision in *Brown*, the Bureau, as we said in our opening brief, did not seek review but instead devised a plan that increased the extent to which YCA offenders were segregated. In the wake of the recent decision in *Watts*, the Bureau is again developing a nationwide plan. The Bureau informs us that the plan is likely to call for institutions to be populated either solely by YCA offenders or solely by adult offenders.

4. Respondent asserts, three times (Resp. Br. 2, 15, 17 n.6), that he was never treated according to the provisions of the YCA, even before he received his adult sentence. So far as we know, respondent has never made this claim before, in this or any other litigation; certainly the claim has never been upheld by a court. Respondent does not even attempt to substantiate it. Nothing we are aware of suggests that respondent was treated as anything other than a YCA offender before he received his first adult sentence. In any event, the claim is wholly immaterial to this case.

5. We have already discussed respondent's double jeopardy argument (pages 7-8 & note 5, *supra*);

his other constitutional contentions are equally without merit. Respondent asserts that treating him as an adult violates the Due Process Clause because "[w]hatever process was due, [respondent] did not receive it" (Resp. Br. 35). This is a puzzling contention. As we show in our opening brief, Congress determined that adult offenders are not to be treated or segregated as if they were YCA offenders, even if they continue to serve YCA terms. Although respondent has a different view of Congress's intentions, we cannot imagine that respondent means to suggest that the decision we attribute to Congress would violate the Due Process Clause. The only remaining question is whether respondent was properly determined to be an adult offender. That determination was made by a criminal trial and sentencing—the most elaborate form of procedure known in our system, and surely sufficient to satisfy the Due Process Clause in this case.

Respondent also raises (Resp. Br. 32-33) what he terms an Equal Protection Clause argument. This argument is based on cases (*e.g.*, *Carter* v. *United States*, 306 F.2d 283, 285 (D.C. Cir. 1962)) upholding 18 U.S.C. 5010(b), the provision of the YCA that allows an offender to be sentenced to a six-year term for a crime carrying a maximum adult sentence of less than six years. Respondent does not dispute our view (Pet. Br. 45-46 n.26) that questions that might arise if such an offender received a subsequent adult sentence are not before the Court and should not be considered at this time, because respondent was sentenced under 18 U.S.C. 5010(c) to a ten-year term for a crime carrying a maximum adult sentence of life imprisonment. As we said in our opening brief, any arguments that might be available to an

offender serving a six-year term for an adult sentence with a lesser maximum are not available to respondent. See, *e.g.*, *United States* v. *Powell*, 423 U.S. 87, 92 (1975); *United States* v. *Raines*, 362 U.S. 17 (1960).

Nonetheless, respondent asserts that treating him as an adult offender violates the Equal Protection Clause because "the rehabilitative opportunities of the YCA sentence may well have been a crucial factor in the sentencing judge's decision regarding the length of the sentence" (Resp. Br. 33). It is difficult even to state this claim as an equal protection challenge, because it is not clear from what class of persons respondent believes himself to have been arbitrarily distinguished. Moreover, as we explain in our opening brief (Pet. Br. 36, 38), since respondent will begin an adult prison sentence when his YCA term ends, the best interpretation of Congress's intentions is that respondent's rehabilitative opportunities will be *enhanced* by treating him as an adult at once instead of continuing inappropriate YCA treatment, which is intended to culminate in a gradual reintegration into society. It is implausible to suggest that such a congressional judgment violates the Equal Protection Clause. In any event, even if the length of respondent's sentence was based on the sentencing judge's incorrect predictions about respondent's future behavior and the resulting actions of prison authorities—and respondent has not shown that his sentence was based on any such prediction—respondent is not entitled to relief. See *United States* v. *Addonizio*, 442 U.S. 178 (1979).

Couched in its most favorable form, respondent's equal protection argument appears to be a claim that it is somehow unfair, or improper, or in derogation of a statutory right not to accord him YCA treat-

ment for the entire length of his sentence. We anticipated this argument in our opening brief (Pet. Br. 16-17, 40-45).

6. In our opening brief we said (Pet. Br. 11 n.12) that if this case becomes moot before the Court decides it, the Court should vacate the judgment of the court of appeals and order respondent's complaint dismissed. See *United States* v. *Munsingwear*, 340 U.S. 36, 39 (1950). Respondent argues (Resp. Br. 36) that the Court should instead dismiss the writ of certiorari as improvidently granted. In cases where the Court has granted certiorari, or considers an issue worthy of plenary consideration, its consistent practice has been that which we suggest. See *e.g.*, *Kremens* v. *Bartley*, 431 U.S. 119, 126, 129 (1977); *Weinstein* v. *Bradford*, 423 U.S. 147 (1975); *Preiser* v. *Newkirk*, 422 U.S. 395 (1975). As we explained in the petition, and in our motion for expedited consideration of the petition, the court of appeals' decision created a conflict among the circuits that interfered with the ability of the Bureau of Prisons efficiently to operate an integrated correctional system. The difficulty is aggravated by two factors: two maximum security prisons, including the most secure institution in the federal system (at Marion, Illinois) are located in the Seventh Circuit; and some courts have intimated (incorrectly, in our view) that prison officials may be held personally liable if the YCA is not followed (see *Micklus* v. *Carlson*, 632 F.2d 227, 239 (3d Cir. 1980)). Respondent advances no sufficient reason, and no authority, for departing from the Court's practice and leaving intact a judgment which this Court thought worthy of review but was unable to review before it became moot.

CONCLUSION

For these reasons and the reasons stated in our principal brief, the judgment of the court of appeals should be reversed.

Respectfully submitted.

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Solicitor General

SEPTEMBER 1981

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